

No. 15796

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United States  
Court of Appeals  
for the Ninth Circuit

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G. A. MILLER, W. W. LORD, RALPH SMEED,  
L. H. STAUS and JACK SMEED, Trustees  
of John W. Smeed Estate, Appellants,

vs.

ARCHIE E. CORBARI, etc., et al., Appellees.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Nevada

FILED

JAN 22 1958

PAUL R. G. BROWN, CLERK



No. 15796

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United States  
Court of Appeals  
for the Ninth Circuit

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G. A. MILLER, W. W. LORD, RALPH SMEED,  
L. H. STAUS and JACK SMEED, Trustees  
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Appeal from the United States District Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

PIKE & McLAUGHLIN,

First National Bank Bldg.,  
Reno, Nevada,

CARVER, McCLENAHAN and GREENFIELD,

Boise, Idaho,

SMITH AND EWING,

Caldwell, Idaho,

For Appellants.

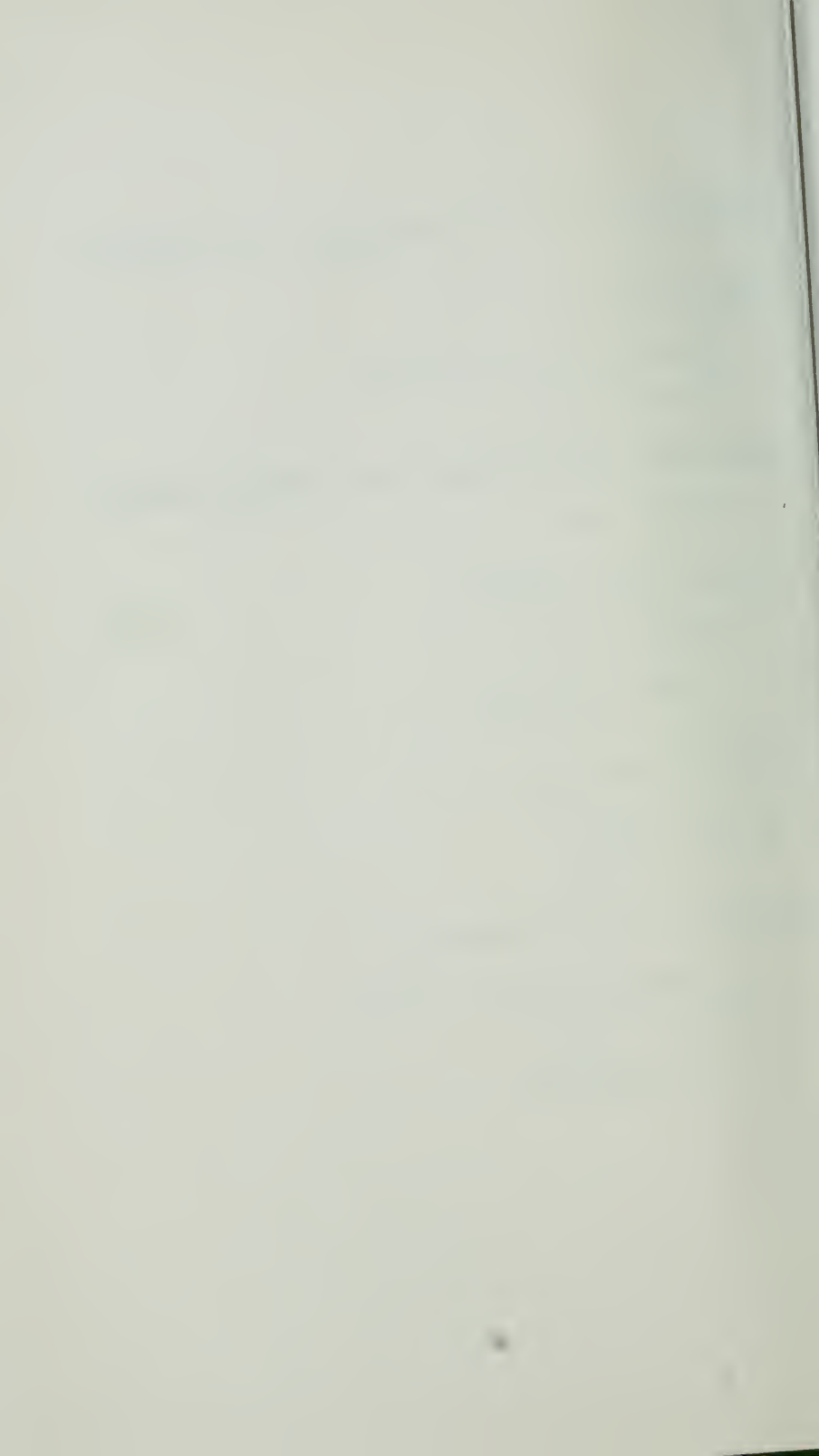
JOHN S. HALLEY,

15 E. First St.,  
Reno, Nevada,

FORREST E. MACOMBER,

711 Bank of America Bldg.,  
Stockton, Calif.,

For Appellees.



United States Court of Appeals  
For The Ninth Circuit

No. 14902

G. A. MILLER, et al., Plaintiffs,

vs.

SAM WAHYOU, et al., Defendants.

MANDATE

United States of America, ss:

The President of the United States of America

To the Honorable, the Judges of the United States  
District Court for the District of Nevada,  
Greeting:

Whereas, lately in the United States District Court for the District of Nevada, before you or some of you, in a cause between G. A. Miller, et al., plaintiffs and Archie E. Corbari, etc., et al., defendants, No. 1029, a judgment was duly filed and entered on the 11th day of August, 1955, which said judgment is of record and fully set out in said cause in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof.

And Whereas, the said G. A. Miller, et al., appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court

of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 25th day of April, in the year of our Lord, one thousand nine hundred and fifty-six, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed and that this cause be, and hereby is remanded to the said District Court for a finding as to whether Wahyou has sustained such a burden of proof on the bases of the evidence presently in the record or any additional evidence the parties may offer with costs in this court in favor of the appellants and against the appellees.

It is further ordered and adjudged by this court that the appellants recover against the appellees for their costs herein expended and have execution therefor.

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the twenty-third day of



July, in the year of our Lord one thousand nine hundred and fifty-six.

(June 8, 1956.)

/s/ PAUL P. O'BRIEN,

Clerk, United States Court of Appeals for the Ninth Circuit.

Costs: Clerk \$25.00. Printing record: \$413.87.  
Total \$438.87.

[Endorsed]: Filed August 6, 1956.

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In The United States District Court  
For The District of Nevada

Civil Action File No. 1029

G. A. MILLER, W. W. LORD, RALPH SMEED,  
L. H. STAUS and JACK SMEED, trustees of  
JOHN W. SMEED ESTATE,

Plaintiffs,

vs.

ARCHIE CORBARI, otherwise known as A. E.  
CORBARI; MARIE CORBARI; SAM WAH-  
YOU; DIAMOND-S RANCH CO., a Nevada  
Corporation; THOMAS G. LEE; TOY  
QUONG; JOE SIN; K. R. NUTTING; YIP  
K. TOON; and HERBERT JANG, otherwise  
known as HERBERT JONG,

Defendants.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

In the above-entitled matter, both Plaintiffs and

the Defendants, except Defendants Corbari, made Motions for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and pursuant to those Motions the Court did on August 11, 1955, make and file in this case its Opinion and Decision on Motions for Summary Judgment. Thereafter, Plaintiffs appealed said decision to the United States Court of Appeals for the Ninth Circuit, which Court ordered the Judgment reversed and the case remanded to this Court for a finding as to whether the Defendant Sam Wahyou has sustained the burden of proving that the transaction whereby he acquired Defendant Archie Corbari's 310 Shares of Common Capital Stock in Diamond-S Ranch Co., a Nevada Corporation, was fair and involved no misuse of his office. The Defendants Archie Corbari, otherwise known as A. E. Corbari, and Marie Corbari, did not appeal from the Summary Judgment granted against them in favor of Plaintiffs by this Court on August 11, 1955, and that Judgment has become final in favor of Plaintiffs herein and against Defendants Archie Corbari, otherwise known as A. E. Corbari, and Marie Corbari.

The above-entitled matter came on for trial on June 4, 1957, before the Court without a jury, for the purpose of taking evidence upon the issue specified in the Mandate of the United States Court of Appeals for the Ninth Circuit, No. 14902, entered the 23rd day of July, 1956, and filed in this Court on the 6th day of August, 1956. John S. Halley, Esq., and Forrest E. Macomber, Esq., appeared as

Counsel for the above-named Defendants, except Defendants Corbari, and Laurence N. Smith, Esq., Miles N. Pike, Esq., and George A. Greenfield, Esq., appeared on behalf of Pike & McLaughlin; Carver, McClenahan & Greenfield; and Smith & Ewing, as Attorneys for the Plaintiffs herein.

Witnesses were sworn, evidence, both oral and documentary, was introduced, and the matter was thereafter submitted to the Court for Decision. Now, therefore, the Court now makes its Findings of Fact and Conclusions of Law as follows:

### Findings of Fact

1. That it is true that Plaintiffs, G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and John H. Smeed are the trustees under the testamentary trust of John W. Smeed, deceased, under his will, duly admitted to probate in the Probate Court of Canyon County, Idaho, and are residents and citizens of the State of Idaho.

2. That it is true that Defendants A. E. Corbari, otherwise known as Archie E. Corbari, and Marie Corbari are husband and wife and are citizens of the State of Nevada; that it is likewise true that the Defendants Sam Wahyou, K. R. Nutting, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon, and Herbert Jang, otherwise known as Herbert Jong, are citizens of California.

3. That it is true that Diamond-S Ranch Co. is a Nevada Corporation organized and existing under the laws of the State of Nevada since the 17th day of December, 1945; that although on September 7,

1950, Diamond-S Ranch Co. filed a Certificate of Election to Dissolve, it elected to rescind the same and filed its Certificate of Revival on December 7, 1951, electing to reinstate said Corporation, and caused said corporation to be renewed and revived as of September 7, 1950, in accordance with Section 93(3), Chapter 177, General Corporation Law of 1925, as amended, of the Statutes of Nevada, and that said Defendant Corporation is and ever since the 17th day of December, 1945, was a bona fide Nevada Corporation.

4. That it is true that the matter of controversy in this suit exceeds, exclusive of interest and costs, the sum of \$3,000.00.

5. That it is true that said defendants, A. E. Corbari and Marie Corbari, on or about December 31, 1948, made and executed and delivered to John W. Smeed, their certain promissory note, in words and figures as follows:

“\$15,041.34. Caldwell, Idaho, December 31st, 1948.

On Demand: or if no demand is made, then on December 31st, 1949 after date, I, we, or either of us, promise to pay to John W. Smeed or order, Fifteen Thousand Forty One and 34/100 Dollars. For value received, negotiable and payable at The First National Bank of Caldwell, Caldwell, Idaho, in Legal Tender of the United States of America, with interest at the rate of five per cent per annum from date, payable annually, and a reasonable attorney's fee in case this note or any part thereof, is collected by an attorney, either with or with-

out suit. If this note is not paid at maturity it shall thereafter bear interest at the rate of Eight per cent per annum until paid, both before and after judgment. All makers and endorsers of this note each hereby expressly waive demand, notice of non-payment and protest, and guarantee the payment of this note at maturity or at any time thereafter.

A. E. Corbari  
Marie Corbari''

No. ....

Due Rt. #1, Box 42,  
P. O. Tracy, California

that it is true that said John W. Smeed is now deceased and the Plaintiffs herein, as trustees under his last will and testament, are now the owners and holders of said note.

6. That it is true that plaintiffs herein have employed Smith & Ewing, Carver, McClenahan & Greenfield and Pike and McLaughlin, Attorneys at Law, to collect said note and have become liable to said Attorneys for a reasonable attorney fee.

7. That it is true that neither of the Defendants Archie E. Corbari or Marie Corbari, his wife, has paid said note or any part thereof, save and except that they have paid thereon the sum of \$750.00 on November 22, 1950.

8. That it is true that the said Defendants Archie E. Corbari, otherwise known as A. E. Corbari, and Marie Corbari, his wife, owe unto Plaintiffs on account of said note the sum of \$14,291.34



plus interest at 5% per annum on the sum of \$15,041.34 from December 31, 1948, to December 31, 1949, plus interest on \$15,041.34 at 8% per annum from December 31, 1949, until November 22, 1950, plus interest on \$14,291.34 at 8% per annum from November 22, 1950, until August 11, 1955, and interest thereafter on the sum of \$14,291.34 at 8% per annum, plus a reasonable attorney fee for services rendered to collect said note.

9. That it is true that said Attorneys, Smith & Ewing, Carver, McClenahan & Greenfield and Pike and McLaughlin, rendered services for Plaintiffs and the Court finds that a reasonable attorney fee is the sum of ten (10%) per cent of the amount of principal plus ten (10%) per cent of the amount of interest due thereon up to the date of Judgment herein.

10. That it is true that the Defendant A. E. Corbari was the owner of 310 shares of the Common Capital Stock of the Defendant Diamond-S Ranch Co. on and prior to July 10, 1950 (subject to the encumbrances hereinafter mentioned), out of a total of 1572½ shares outstanding as of that date, and the Defendants Sam Wahyou, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang owned the balance of the shares.

11. That it is true that on January 4, 1949, the Defendant Archie E. Corbari made and executed to the Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, a general assignment and pledged his 310 shares of Diamond-S Ranch Co. stock to the said Bank to secure certain

indebtedness for which he was wholly or jointly liable; that it is true that on September 18, 1950, said Defendant Corbari made and executed to said Bank a second pledge agreement securing a promissory note to said Bank dated July 10, 1950, in the amount of \$6,000.00, and also to secure his note to one D. W. Zignego in the sum of \$12,500.00 on which there was a balance due of \$10,000.00 plus interest, and to secure an indebtedness due one Forrest E. Macomber in the amount of \$12,000.00 plus interest, and that the pledge agreement of September 18, 1950, was to secure the indebtedness to the said Bank, Zignego and Macomber in the order named.

12. That it is true that on or about October 17, 1950, the said Bank of America N. T. & S. A., Hunter Square Branch, at Stockton, California, assigned all of its right, title and interest in and to said promissory note owing by said Defendant Corbari, together with the security, consisting of the pledge of 310 Shares of the Common Capital Stock of Diamond-S Ranch Co. owned by said Defendant Corbari, unto Sam Wahyou, who paid said Bank the sum of \$5,500.00 therefor, which sum of \$5,500.00 consisted of \$5,000.00 in principal and \$500.00 in interest owing by Defendant Corbari on the promissory note of July 10, 1950, and which indebtedness was all long past due; that it is true that said Defendant Wahyou had purchased said note and pledge from said Bank after said Bank had made many demands upon Defendant Corbari for the payment thereof and had threatened to

foreclose its pledge on said 310 Shares of Stock which secured payment of the note.

13. That it is true that on or about the 22nd day of February, 1950, Defendant A. E. Corbari agreed with Plaintiffs to secure the promissory note owing by Defendants Archie E. Corbari and Marie Corbari, his wife, to Plaintiffs' predecessor in interest, and on or about October 31, 1950, executed a writing to one W. W. Lord as trustee, which writing is in words and figures as follows:

"Assignment

"Know All Men By These Presents, that Whereas, I, A. E. Corbari, am indebted on a certain note given to John W. Smeed, dated December 31, 1948, due December 31, 1949, in the principal amount of \$15,041.34, plus interest at the rate of five per cent per annum, together with costs incurred in connection therewith in the sum of \$775.00, and the sum of \$2.06 interest per day until the payment of said indebtedness;

Now, Therefore, in consideration of the premises, and to secure the payment of said indebtedness, I do hereby sell, assign, transfer and set over unto W. W. Lord, as Trustee, all my right, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond-S Ranch Co., a Nevada corporation, and in and to any profits arising from the operation of said partnership. I further state that I was the owner of 310 shares of stock in said Diamond-S Ranch Co., and



that the total outstanding shares of stock in said Company was 1,572½ shares, and that my interest in the partnership and the assets of the partnership formed in connection with the dissolution of said Company, is in the same proportion as was my holding of stock in the total outstanding issue thereof. And I hereby grant unto said W. W. Lord, as Trustee, full power, in my name or otherwise, to hold and operate said partnership interest, and the assets thereof, in the same manner as I could personally do, until the payment in full of said indebtedness and any other costs which may be incurred in connection with any transaction regarding collection of said indebtedness.

This assignment is made upon the express condition that if I shall pay or cause to be paid to the said W. W. Lord, as trustee, his successor or assigns, the above-recited indebtedness on or before April 25, 1951, then this assignment shall be void and of no effect.

In case the said W. W. Lord, as trustee, his successors or assigns, shall collect the moneys due on the said indebtedness he or they shall, after retaining the full amount of the above indebtedness, and the reasonable costs and expenses of collection, pay over the surplus, if any, to me, or my successors, administrators or assigns.

In case of non-payment of said indebtedness on or before April 25, 1951, I hereby appoint and constitute said W. W. Lord, as trustee, his successors or assigns, my attorney, irrevocable, with power of substitution, to take possession of, and

if he so desires, to sell at any time after said payment is due, with or without notice, at the option of said Trustee, the whole or any part of said security either at public or private sale, at his discretion, and the proceeds thereof to be applied on the payment of said indebtedness, and any surplus after payment of said indebtedness and expenses to be subject to my order. In like manner I agree to pay on demand to said W. W. Lord, as trustee, his successors or assigns, whatever deficit may result after applying the net proceeds of such sale to the payment of said indebtedness.

And I, Marie Corbari, the wife of said A. E. Corbari, hereby join in this assignment and consent thereto, to the same extent as though named in the body of said assignment.

In Witness Whereof, We have hereunto set our hands and seals, this 31st day of October, 1950.

[Seal]                   A. E. CORBARI

A. E. Corbari

[Seal]                   MARIE CORBARI

Marie Corbari"

and that said writing was recorded March 27, 1951, in the Office of the County Recorder of Humboldt County, Nevada.

14. That at the time said document of October 31, 1950, was executed and delivered, and for some months prior thereto, Plaintiffs had notice of and knowledge that Defendant Archie E. Corbari's 310 shares of the Common Capital Stock in Diamond-S Ranch Co. had been pledged to the Bank of

America N. T. & S. A., Hunter Square Branch, Stockton, California, in order to secure the Corbari's indebtedness to said Bank.

15. That it is true that after the Defendant Sam Wahyou purchased the Defendant Archie Corbari's note from the said Bank of America and the Defendant Archie Corbari failed to pay said note unto the Defendant Sam Wahyou, and by reason of the non-payment of said note to the Defendant Sam Wahyou, the said Defendant Sam Wahyou caused said stock to be sold under the terms of said pledge agreements and pursuant to the laws of the State of California relating to sales of pledged property, and on May 21, 1951, said 310 shares of the Common Capital Stock of Diamond-S Ranch Co., the subject matter of said pledge, were sold at public auction at the Main St. Entrance to the County Courthouse in the City of Stockton, County of San Joaquin, State of California, in accordance with the laws of the State of California, and said 310 shares were purchased by Gordon J. Aulik as agent for Sam Wahyou and in the name of Sam Wahyou for the sum of \$5,500.00.

16. That it is true that the said sale was fairly made in accordance with the laws of the State of California relating to the sale of pledged property and fairly conducted, and the Defendant Sam Wahyou has sustained the burden of proving and has proven that there was no fraud or misrepresentation or other unfair means involved in the purchase of said shares by the Defendant Sam Wahyou, and

it is true that the transaction whereby the said Defendant Sam Wahyou acquired the Defendant Archie E. Corbari's stock was fair and that the reasonable value of the shares of stock at the time of the purchase thereof by Defendant Sam Wahyou at said sale on May 21, 1951, was nil and that the said shares after the date of purchase and up to the time of the trial of this action were of no value whatsoever.

17. That it is true that insofar as the value of said stock was concerned as of the date of its sale at public auction and its purchase by Defendant Sam Wahyou on May 21, 1951, there were no facts within the knowledge of the said Defendant Sam Wahyou that were not equally available to Plaintiffs or the Defendant Archie E. Corbari.

From the foregoing facts, the Court concludes:

### Conclusions of Law

1. That Plaintiffs are entitled to the judgment against the Defendants Archie E. Corbari, otherwise known as A. E. Corbari, and Marie Corbari, his wife, as heretofore determined by this Court in the Order granting Summary Judgment made and filed herein on August 11, 1955.

2. That Plaintiffs are entitled to take nothing against the Defendants Sam Wahyou, Diamond-S Ranch Co., a Nevada Corporation, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang, otherwise known as Herbert

Jong, and that the said Defendants are entitled to their costs of court herein incurred.

Let judgment be entered accordingly.

Dated: Sept. 27, 1957.

/s/ JOHN R. ROSS,  
U. S. District Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Sept. 27, 1957.

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In The United States District Court  
For The District of Nevada

Civil Action File No. 1029

G. A. MILLER, W. W. LORD, RALPH SMEED,  
L. H. STAUS and JACK SMEED, trustees  
of JOHN W. SMEED ESTATE,  
Plaintiffs,

vs.

ARCHIE CORBARI, otherwise known as A.E.  
CORBARI; MARIE CORBARI; SAM WAH-  
YOU; DIAMOND-S RANCH CO., a Nevada  
Corporation; THOMAS G. LEE; TOY  
QUONG; JOE SIN; K. R. NUTTING; YIP  
K. TOON; and HERBERT JANG, otherwise  
known as HERBERT JONG,

Defendants.

### JUDGMENT

In the above-entitled matter, both Plaintiffs and Defendants, except Defendants Corbari, made Mo-



tions for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and pursuant to those Motions the Court did on August 11, 1955, make and file in this case its Opinion and Decision on Motions for Summary Judgment. Thereafter, the Plaintiffs appealed said decision to the United States Court of Appeals for the Ninth Circuit, which Court ordered the Judgment reversed and the case remanded to this Court for a finding as to whether the Defendant Sam Wahyou has sustained the burden of proving that the transaction whereby he acquired the Defendant Archie Corbari's 310 Shares of Common Capital Stock in Diamond-S Ranch Co., a Nevada Corporation, was fair and involved no misuse of his office. The Defendants Archie Corbari, otherwise known as A. E. Corbari, and Marie Corbari, did not appeal from the Summary Judgment granted against them in favor of Plaintiffs by this Court on August 11, 1955, and that Judgment has become final in favor of Plaintiffs herein and against Defendants Archie Corbari and Marie Corbari.

The above-entitled matter came on for trial on June 4, 1957, before the Court without a jury, for the purpose of taking evidence upon the issue specified in the Mandate of the United States Court of Appeals for the Ninth Circuit, No. 14902, entered the 23rd day of July, 1956, and filed in this Court on the 6th day of August, 1956. John S. Halley, Esq., and Forrest E. Macomber, Esq., appeared as Counsel for the above-named Defendants, except the Defendants Corbari, and Laurence N. Smith,

Esq., Miles N. Pike, Esq., and George A. Greenfield, Esq., appeared on behalf of Pike & McLaughlin; Carver, McClenahan & Greenfield; and Smith & Ewing, as Attorneys for the Plaintiffs herein.

Witnesses were sworn, evidence, both oral and documentary, was introduced, and the matter was thereafter submitted to the Court for decision. And the Court being fully advised in the premises and having heretofore made and entered herein its Findings of Fact and Conclusions of Law; now, therefore,

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That Plaintiffs herein have and recover of and from the Defendants Archie E. Corbari, otherwise known as A. E. Corbari, and Marie Corbari, his wife, as heretofore determined by this Court in the Order granting Summary Judgment made and filed herein on August 11, 1955.

2. That Plaintiffs take nothing against the Defendants Sam Wahyou, Diamond-S Ranch Co., a Nevada Corporation, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang, otherwise known as Herbert Jong, and that the said Defendants have and recover of and from the Plaintiffs herein their costs incurred herein, taxed at the sum of \$227.88.

Dated: Sept. 27th, 1957.

/s/ JOHN R. ROSS,

U. S. District Judge.

[Endorsed]: Filed Sept. 27, 1957.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given, that G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, Trustees of John W. Smeed Estate, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that portion of the Judgment which was made and entered by the United States District Court for the District of Nevada, on the 27th day of September, 1957, granting judgment for the defendants on Counts 2, 3 and 4 of the Amended Complaint both as to law and facts and the whole thereof.

Dated: October 11, 1957.

PIKE & McLAUGHLIN,  
SMITH & EWING,  
CARVER, McCLENAHAN &  
GREENFIELD,

/s/ By LAURENCE N. SMITH,  
Attorneys for Plaintiffs.

Acknowledgment of Service Attached.

[Endorsed]: Filed Oct. 16, 1957.

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[Title of District Court and Cause.]

### STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL

Pursuant to Rule 17 (6) of the Rules of the



above entitled Court, appellants do hereby make the following statement of points upon which they intend to rely on appeal:

1. The Court erred in making and entering its Finding of Fact No. 14, such Finding of Fact being against the weight of evidence and in conflict with the admitted facts and is clearly erroneous.

2. The Court erred in making and entering its Finding of Fact No. 16 in that each statement of fact contained therein is erroneous and contrary to the evidence and that the evidence clearly showed the Corbari stock to have substantial value.

3. The Court erred in making and entering its Finding of Fact No. 17 in that each statement of fact therein contained is erroneous and contrary to the evidence and that the evidence clearly showed the Corbari stock to have substantial value.

4. The Court erred in making its Conclusions of Law No. 2.

5. The Court erred in entering the Judgment of September 27, 1957.

6. The Court erred in granting Judgment to the defendants on Counts 2, 3 and 4 of the Amended Complaint for the reason that the burden of proof being on the defendants was not sustained.

7. The Court erred in failing to grant plaintiffs' Motion for Judgment at the close of defendants' case for the reason that the defendants failed to

sustain the burden of proof as to the bona fides of the transaction.

8. The Court erred in failing to find that the transaction on the part of Wahyou is one which would enrich the said Wahyou.

9. The Court erred in failing to find that the sale of the Corbari stock to Wahyou was void because Wahyou had made misuse of his office as Trustee.

10. The Court erred in failing to find that the Corbari stock was worth substantially more than the price paid by Wahyou and that as a result Wahyou unjustly enriched himself.

11. The Court erred in failing to find that Wahyou at the time he made the purchase of the Corbari stock intended and believed that he was purchasing stock of a substantially greater value than the price paid.

12. That the Findings of Fact and Conclusions of Law are contrary to the weight of evidence and are not supported by competent evidence.

PIKE & McLAUGHLIN,  
SMITH & EWING,  
CARVER, McCLENAHAN &  
GREENFIELD,

/s/ By MILES N. PIKE,  
Attorneys for Plaintiffs.

Acknowledgment of Service Attached.

[Endorsed]: Filed Oct. 17, 1957.

[Title of District Court and Cause.]

## DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the plaintiffs-appellants hereby designate for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by notice of appeal filed October 16, 1957, the following portions of the record, proceedings and evidence in this action:

1. The Complaint.
2. The answer of the defendant, Diamond-S Ranch Co. to the complaint.
3. The answer of the defendants, A. E. Corbari and Marie Corbari, to the complaint.
4. Plaintiffs' motion for leave to file first amended complaint.
5. Order granting plaintiffs' motion for leave to file first amended complaint.
6. First amended complaint.
7. Answer of defendant, Diamond-S Ranch Co. to first amended complaint.
8. Answer of the defendants A. E. Corbari and Marie Corbari to first amended complaint.
9. Answer of the defendants, Forrest E. Macomber, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon, Herbert Jang and D. W. Zignego to first amended complaint.
10. Plaintiffs' request for admissions on the part of the defendants, Diamond-S Ranch Co.

11. Verified response to request for admissions on the part of the defendant, Diamond-S Ranch Co.

12. Defendants' motion to quash service of summons, motion to dismiss and motion to strike.

13. Order denying defendants' motion to quash service, denying motion to dismiss, and granting in part and denying in part motion to strike.

14. Stipulation by and between the parties as to exhibits.

15. Factual Statement of the defendant, Diamond-S Ranch Co.

16. Deposition of Wayland W. Lord.

17. Deposition of Archie E. Corbari.

18. Deposition of Sam Wahyou and Forrest E. Macomber.

19. Pre-trial order.

20. Plaintiffs' motion for summary judgment.

21. Defendants' motion for summary judgment.

22. Findings of Fact and Conclusions of Law.

23. Judgment denying plaintiffs' motion for summary judgment and granting defendants' motion for summary judgment.

24. Notice of Appeal.

25. Statement of Points on Appeal.

26. Amended Designation of Contents of Record on Appeal.

27. On return from the Appellate Court the 18 exhibits used in the appeal in Case No. 14902; the deposition of Archie Corbari, dated October 17, 1952; the deposition of W. W. Lord, dated October 17, 1952; and the deposition of Sam Wahyou, dated October 18, 1952.

The foregoing 27 items not to be printed they appearing in the transcript of record in Case No. 14902, United States Court of Appeals for the Ninth Circuit.

Additional contents to be printed:

28. Transcript of testimony and proceedings taken and had at the hearing on June 3rd and 4th, 1957.

29. Plaintiffs' Exhibits Nos. 1, 2, 3, 4 and 5 as follows:

1. The deposition of Robert Wisecarver;

2. Map of the Real Property; (Not to be Printed).

3. Appraisal made by Idaho Land and Map Service;

4. Appraisal made by Jack Utter;

5. Deposition of Sam Wahyou dated October 20, 1956.

30. Defendants' Exhibits lettered A to G, both inclusive, as follows:

A. Grazing Fee Receipt;

B. Balance Sheet of Diamond-S Ranch Co. as of 12/31/56;

C. Adjusted Balance Sheet;

D. Statement of Capital Expenditures;

E. Analysis of Capital Expenditures;

F. Letter of Grazing Service;

G. Wahyou Financial Statement.

31. Mandate to the Trial Court from the Circuit Court of Appeals.

32. The Findings of Fact and Conclusions of Law and Judgment dated September 27, 1957.

33. Notice of Appeal.
34. Statement of Points on Appeal.
35. This designation.

PIKE & McLAUGHLIN,  
SMITH & EWING,  
CARVER, McCLENAHAN &  
GREENFIELD,

/s/ By MILES N. PIKE,  
Attorneys for Plaintiffs.

Acknowledgment of Service Attached.

[Endorsed]: Filed Oct. 17, 1957.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Nevada—ss.

I, Oliver F. Pratt, Clerk of the United States District Court for the District of Nevada, do hereby certify that the accompanying documents and exhibits, listed in the attached index, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 7th day of November, 1957.

[Seal]      /s/ OLIVER F. PRATT,  
Clerk.



In The United States District Court,  
For The District of Nevada

No. 1029

G. A. MILLER, et al., Plaintiffs,

vs.

ARCHIE CORBARI, et al., Defendants.

TRANSCRIPT OF TESTIMONY

June 4, 1957

Carson City, Nevada

Before: Hon. John R. Ross, Judge.

Trial

Be It Remembered, That the above-entitled matter came on for trial before the Court, sitting without a jury, on Tuesday, the 4th of June, 1957, at Carson City, Nevada.

Appearances: Laurence N. Smith, Esq., Miles N. Pike, Esq., George Greenfield, Esq., Attorneys for Plaintiff. Forrest E. Macomber, Esq., John S. Halley, Esq., Attorneys for Defendants Sam Wahyou and Diamond-S Ranch Company.

The following proceedings were had:

KENNETH R. NUTTING

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Macomber): Your name is Kenneth R. Nutting?      A. That is correct.

(Testimony of Kenneth R. Nutting.)

Q. Where do you live? [1\*]

A. Salinas, California.

Q. Are you a stockholder in Diamond-S Ranch?

A. I am.

Q. Are you an officer and director?

A. I am.

Q. What office do you hold?

A. Vice-president.

Q. And a director?                    A. And a director.

Q. Had you acquired some stock, 140 shares of stock, in the Diamond-S Ranch on or about the month of June, 1950?                    A. I did.

Q. From John Fox?                    A. John Fox.

Q. What was the consideration for that stock?

A. Well, that stock was then owned by K. R. Nutting Company, of which John Fox was a partner.

Q. So you had already owned that?

A. Yes.

Q. It was in Mr. Fox's name but your stock?

A. That is correct.

Q. On or about June 15th of 1950 did you acquire an additional 489 shares of stock in the Diamond-S Ranch?                    A. I did.

Q. From whom? [2]                    A. Sam Wahyou.

Q. What was the consideration for that?

A. I paid Sam Wahyou twenty thousand dollars for 489 shares, which supposedly represented thirty-two per cent of the stock then outstanding,

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\* Page numbers appearing at bottom of page of Reporter's Original Transcript of Record.



(Testimony of Kenneth R. Nutting.)

which with the 140 shares I had gave me forty per cent interest, with the understanding that the twenty thousand dollars was to be used——

Mr. Smith: Just a moment. We object to any enlargement of the question beyond the immediate question.

Q. Was the sale conditional or unconditional?

A. It was a conditional sale.

Q. And under what conditions?

A. I paid twenty thousand dollars cash and it was to use that twenty thousand dollars to re-invest in the Ranch as operating capital.

Q. Did you thereafter acquire any other shares in the ranch?           A. Acquire any others?

Q. Yes.

A. In August, 1953, I gave to Mr.——

Q. You didn't acquire any?

A. I didn't acquire any further at that time.

Q. Did you sell any stock in the Diamond-S Ranch?

A. I did not sell any; I gave some.

Mr. Smith: Just a minute—the date is important as to that. Fix the date, please. [3]

A. August, 1953.

Q. On or about August 30, 1953——

Mr. Smith: Just a minute. Your Honor, I believe at the pre-trial there was a stipulation, under which the cut-off date was the date of sale of stock, which was May 21, 1951. Any sales after May 21, 1951 are too remote and would have no bearing upon the matter before the Court, and for the

(Testimony of Kenneth R. Nutting.)

further reason that there could have been changes in the condition of the ranch between the date of 1951 and 1953, which would affect the stock one way or the other.

Mr. Macomber: We will show what those changes are, your Honor.

The Court: I did think the cut-off date was the date of the sale, as counsel pointed out, and the objection on that point is good.

Mr. Macomber: This would have no bearing on what the stock was worth; if you take one particular date and there was no transaction on or about that date, you have nothing to go on, and if you can show as closely as you can what sales there were to that date, it would have some bearing there, go to the weight of the testimony.

The Court: For that purpose it may be admitted.

Q. Did you dispose of any of your stock in the Diamond-S Ranch by August 30, 1953?

A. Yes, in August, 1953, I gave to Hogue one hundred five [4] shares, for which there was no consideration. This was done to equalize the stock between Mr. Wahyou and Mr. Hogue and myself, with everybody winding up with one-third.

Q. So since August 30, 1953, all of you, that is, Wahyou, Hogue and yourself, each owned one-third of the stock? A. That is correct.

Q. And prior to that time, between June of 1950 and August of 1953, you owned forty per cent of that stock? A. That is correct.

(Testimony of Kenneth R. Nutting.)

Q. Now would you tell the Court the condition of the Diamond-S Ranch in 1951?

Mr. Smith: Just one minute—it would be necessary he qualify himself to show he is familiar with the books and records of the corporation.

Mr. Macomber: I am talking about physical properties.

Q. You have been to the Diamond-S Ranch?

A. I was on the ranch, yes. You are speaking now of 1950?

Q. Well, 1951. A. 1951—at that time——

Mr. Smith: What time in 1951, please?

A. The spring. The ranch was in rather delapidated condition, so far as ditches and irrigation possibilities and Mr. Wahyou and myself attempted to rehabilitate them, as far as operating the ranch at that time.

Q. What crops were grown on the ranch at that time? [5]

A. At that time there were no crops, except feed in the meadows.

Q. Will you describe that a little bit more? Describe the ranch to the Court.

A. Well, the ranch had been neglected, it looked as though it had been neglected for quite some time. When I went onto the ranch with Mr. Wahyou I thought it could be built up and made into a fairly good cattle ranch. At that time it required considerable amount of work. As I mentioned, the irrigation system was very little use, had to be excavated, and had not been watered for

(Testimony of Kenneth R. Nutting.)

some time. I can say it was in rather poor condition.

Q. What, in your opinion, was the value of the Diamond-S Ranch in 1951?

Mr. Smith: Your Honor, I object to that on the ground that he has not been proven competent to give an expert appraisal on the property, having given no testimony at all of his knowledge of ranch values in the vicinity, nor has made no other qualification as an expert.

Mr. Macomber: He has testified he was vice-president of the company and a director.

The Court: Well, as the owner of stock, I guess he does have a right to give his opinion.

Mr. Smith: As of what time?

The Court: Any owner may testify without showing background. Objection overruled. [6]

A. I would estimate the ranch about one hundred fifty thousand dollars. They had cattle, they had grazing rights for over a thousand head. There is a certain rule of thumb of one hundred fifty dollars a head of that grazing rights, that is, the value of the property is worth approximately one hundred fifty dollars a head.

Q. Do you know what in 1951 the actual—

The Court: Pardon me—then your conclusion as to the value of one hundred fifty thousand dollars is based upon this rule of thumb which you speak of, to the effect that a livestock set-up is roughly valued at one hundred fifty dollars per head of cattle?

(Testimony of Kenneth R. Nutting.)

A. That is true.

The Court: And that value then of one hundred fifty thousand dollars is only a formula?

A. That is correct.

Q. With respect to feeder rights, or Taylor grazing rights, do you know what rights the Diamond-S Ranch Company had in 1951, what Taylor grazing rights they had?

A. You mean the Diamond-S itself, or including leased land that they had?

Q. Have the rights been approximately the same from 1951 to date? A. I think so.

Mr. Macomber: May I have this marked for identification, [7] receipt of the United States Department, Bureau of Land Management, with respect to Taylor grazing rights for the Diamond-S Ranch.

Mr. Pike: This is for the grazing season 1957, that is correct, is it not?

Mr. Macomber: That is correct.

The Court: It may be marked for identification Defendants' Exhibit A.

Q. Mr. Nutting, I show you Defendants' Exhibit A for identification. Does that refresh your recollection as to what the Taylor grazing rights were?

Mr. Smith: Just a moment.

Mr. Macomber: I haven't finished my question.

A. Yes. I see——

Mr. Smith: Just a moment.

The Court: Where are we?

Mr. Smith: Mr. Macomber said he had not fin-



(Testimony of Kenneth R. Nutting.)

ished his question, so I withdraw the objection I started to make until the question is asked.

The Court: Restate the question.

Q. Does that refresh your recollection as to what the Taylor grazing rights are at this time?

A. Yes, it does.

Mr. Smith: Just a minute. Your Honor, may I ask a question on voir dire? [8]

The Court: You may.

Mr. Smith: (On voir dire) Did you prepare that memorandum yourself? A. I did not.

Q. And it came from the Taylor Grazing—you have not had it in your possession?

A. This is the first time I saw it.

Q. And it is dated for the grazing year 1957, is it not? A. Yes.

Mr. Smith: Your Honor, I object on the grounds it is not a memorandum he has prepared by himself from which he could recollect his memory on, and it is too remote, dated for the year 1957.

The Court: Objection sustained.

Mr. Macomber: At this time, if the Court please, I offer in evidence the receipt of the United States Department of the Interior, Bureau of Land Management, showing the extent of the Taylor grazing rights for the Diamond-S Ranch for the year 1957, as Defendants' Exhibit A. The witness has already testified they were approximately the same from 1951 to date.

Mr. Smith: Your Honor, there has been no such testimony on the part of the witness at all.

(Testimony of Kenneth R. Nutting.)

Mr. Halley: I think the witness has testified the Taylor grazing right is the same from 1951 to date.

Mr. Macomber: May we have the record on that, please. [9]

The Court: Do you make objection on that basis?

Mr. Smith: Yes, I do.

The Court: Objection sustained. I do not see why you can not obtain from the Grazing Service exactly what the rights were at a certain date.

Mr. Macomber: We have to bring a witness from Winnemucca to do that.

Mr. Greenfield: Your Honor, I think we can probably arrange that. The records are in Winnemucca and whatever the rights were in 1951, I am sure we can agree to.

Mr. Halley: I think we can dispose of this matter with counsel during the recess and work out a stipulation.

Mr. Greenfield: As a matter of fact, we have copies of the Bureau of Grazing office records for 1951 in our own possession and I am sure we can agree on the rights.

The Court: Of course, there will be no question as to the authenticity of these records, just a case of getting together, so there is no reason why you can't stipulate.

Mr. Macomber: That is right.

Q. Mr. Nutting, do you know what the Taylor Grazing rights, as distinguished from the leased land, were in 1951?           A. Again?



(Testimony of Kenneth R. Nutting.)

Q. Do you know what the Taylor Grazing rights alone were that were attributable to Diamond-S Ranch Company in 1951, approximately? [10]

A. Do you mean the owned land of the Diamond-S?

Q. No, I mean the Taylor Grazing rights, that is, the government land that was used in connection with the Diamond-S Ranch Company for grazing of cattle?

A. Well, I don't know exactly; approximately three hundred head.

Q. For what period of time?

A. Five months.

Q. And do you know how much——

The Court: You are speaking now of Taylor Grazing rights. In other words, between the fee ownership and rights you acquired in leasing the lands, the ranch does have a total of approximately three hundred head?

A. The ranch itself had approximately three hundred and the balance was on leased ground.

The Court: The balance of one thousand?

A. Balance of a thousand.

Q. Do I understand, then, it is your testimony that the animal unit carrying capacity of the ranch was one thousand head?

Mr. Greenfield: If we are going to strike out from the record all ranch rights, I think this line of questioning is objectionable.

Mr. Macomber: That is right. I withdraw the question. That's all. [11]

(Testimony of Kenneth R. Nutting.)

Cross Examination

Q. (By Mr. Greenfield): Mr. Nutting, you have testified, in placing your valuation on this property, that by a rule of thumb one hundred fifty dollars a head is approximately the method you employed to arrive at your valuation of one hundred fifty thousand dollars? A. That is correct.

Q. Then you were basing your valuation on approximately a thousand head right that you testified to, is that right? A. That's right.

Q. Now, if, as a matter of fact, the ranch carried a sixteen hundred head right, then your valuation of the ranch would be in the neighborhood of two hundred forty thousand dollars, wouldn't it?

A. Based on that theory, yes.

The Court: By the same token, if subtracted from the thousand head permit, the number of head that applied to leased land, you would reduce the value?

Mr. Greenfield: I presume so, if those are the facts.

Q. The leased lands that are involved here are the property of the Diamond-S Ranch Corporation, are they not?

A. One lease, the Milem lease, is the property of the Diamond-S Ranch. The other lease from the Southern Pacific Company is not the property of the Diamond-S Ranch, but my property, which I turned over to the Diamond-S Ranch. [12]

Q. You turned it over to them?

(Testimony of Kenneth R. Nutting.)

A. The lease is in my name. It is, for all practical purposes, a part of the ranch.

Q. And part of the assets of the corporation, for all practical purposes?

A. Yes. The lease is still in my name.

Q. If you were selling the ranch, you would include that in the inducement?

A. That is correct.

Q. And when you gave us your valuation of the ranch, you were including the Southern Pacific lease as part of the assets? A. Yes.

Mr. Greenfield: That is all.

#### Redirect Examination

Q. (By Mr. Macomber): What is the term of the Milem lease, the Southern Pacific lease?

A. Yearly.

Q. You don't know about the Milem lease?

A. I don't know about the Milem.

Mr. Macomber: That's all.

#### Recross Examination

Q. (By Mr. Greenfield): In connection with the Southern Pacific lease, which you say is a yearly proposition, of course, since the land involved is contiguous with your deeded land, you have a priority in the right to lease it? [13]

A. Yes.

Q. And there is no question but what you can lease every year as long as you wish?

A. I think there is no question.

(Testimony of Kenneth R. Nutting.)

Q. And nobody else can come in ahead of you?

A. That is correct.

The Court: That is, you can lease every year if the Southern Pacific wants to lease it?

A. There is no definite commitment.

The Court: Just as a matter of convenience, you seem to be in a position to buy the lease from the Southern Pacific. On the other hand, if the Southern Pacific does not want to lease it, they do not have to.

Q. (By Mr. Macomber): As a matter of fact, while you owned stock in the ranch, the Southern Pacific did sell this property right along, didn't they?

Mr. Greenfield: I beg your pardon, I haven't finished.

Q. (By Mr. Greenfield): Mr. Nutting, returning again to the Southern Pacific leases, those are alternating sections, aren't they? A. Yes.

Q. So that, as a practical matter, it would be quite hard to find any one else to find the use for it you would have?

A. Those are interspersed with the government land. [14]

Q. Interspersed with federal range that you use for ranging cattle on? A. Yes.

#### Redirect Examination

Q. (By Mr. Macomber): Do you know whether the Southern Pacific has sold some of this land to Milem?

(Testimony of Kenneth R. Nutting.)

A. They did. Milem bought his land from the Southern Pacific.

Mr. Greenfield: That's all.

The Court: I presume some place along the line we will have the term of the Milem lease?

Mr. Macomber: Yes.

### FRANK H. HOGUE

a witness on behalf of the defendant, being duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Macomber): Your name is Frank H. Hogue? A. That is right.

Q. Where do you live, Mr. Hogue?

A. Yuma, Arizona.

Q. Are you a stockholder in the Diamond-S Ranch Company? A. Yes, I am.

Q. Are you likewise a director?

A. That is right.

Q. What percentage of the shares do you own at the present time? A. One-third.

Q. On or about August 30, 1953, did you acquire some shares? [15] A. Yes.

Q. And from whom did you acquire them?

A. Sam Wahyou.

Q. How many shares?

A. Probably around five hundred, I think.

Q. Did you acquire any shares from Mr. Nutting?

A. Yes, I acquired some one hundred four shares.

(Testimony of Frank H. Hogue.)

Q. What was the consideration for them?

Mr. Greenfield: We object to the question on the ground it is irrelevant and immaterial, in that was a transaction taking place some two years after the transaction that we are concerned with and in issue here and as an appropriate value it is too remote in time to have any value or materiality in this case.

The Court: 1953?

Mr. Macomber: Same date. It has already been testified to.

The Court: Objection overruled.

Q. Will you answer that question? What did you pay Mr. Nutting for the one hundred four shares? A. I didn't pay Nutting anything.

Q. What did you pay Mr. Wahyou?

A. I paid Wahyou thirty-five thousand dollars for one-third interest.

Q. And was that sale conditional or unconditional? [16] A. It was conditional.

Q. What were the conditions, if any?

A. The conditions were that the money should go into financing the ranch, further financing.

Mr. Macomber: That's all.

#### Cross Examination

Q. (By Mr. Greenfield): Mr. Hogue, how many shares of stock did Mr. Wahyou transfer to you?

A. Something like five hundred. I haven't the exact number, five hundred twenty or——

Q. I might ask you this, Mr. Hogue—were you



(Testimony of Frank H. Hogue.)

familiar with the financial condition of the corporation at the time you purchased this stock of Mr. existed in 1951?      A. No.

Q. Were you familiar with the condition as it existed in 1951      A. No.

Q. Would you tell the Court whether or not the financial condition of the ranch at the time you bought from Mr. Wahyou was better or worse than it was in 1951?

A. I do not know what it was in 1951.

Q. It may have been considerably better in 1951, for all you know?      A. That is true.

Mr. Greenfield: I think that is all.

Mr. Macomber: That is all. [17]

The Court: Mr. Hogue, you said that you paid Mr. Wahyou thirty-five thousand dollars for one-third interest?

A. That is correct.

The Court: What did you mean by a one-third interest, a one-third interest in the entire outstanding stock, so you became one-third owner of the corporation?

A. That is correct.

### JOHN K. BUXTON

a witness on behalf of the defendant, being duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Macomber): Your name is John Kenneth Buxton?      A. That's right.



(Testimony of John K. Buxton.)

Q. And where do you live, Mr. Buxton?

A. Stockton, California.

Q. What is your business or occupation?

A. Certified public accountant.

Q. How long have you been a certified public accountant?      A. Since 1950.

Q. What experience have you had in that occupation prior to this time?

A. Some fifteen years.

Q. And you are the accountant for the Diamond-S Ranch?      A. I am. [18]

Q. How long have you been accountant for the Diamond-S Ranch?

A. Since approximately the first of this year.

Q. And have you prepared a financial statement of the Diamond-S Ranch and comparative balance sheet for the years 1950 through 1956?

A. I did.

Q. From the books of the corporation?

A. From the books of the corporation.

Q. And you have some copies of that with you?

A. Yes, I do.

Q. Would you give them to me please?

The Court: Comparative balance sheet marked Defendant's B for identification.

Q. Mr. Buxton, I hand you defendant's Exhibit B for identification and ask you if that is the comparative balance sheet that you prepared?

A. Yes, it is.

Q. Is it a true reflection of the data contained in the books of the corporation?      A. Yes.

(Testimony of John K. Buxton.)

Mr. Smith: May the answer be stricken for the purpose of making an objection?

The Court: It may be.

Mr. Smith: I object to the comparative balance sheet which is introduced, page 2 thereof being an adjusted balance [19] sheet of December 31, 1956, and page 2 in addition even contains the year 1956, on the ground that this is five years after the cut-off date. I object to the comparative balance sheet which covers the years 1950 to 1956 on the ground proper basis for that has not been laid in any way. He is simply asking if he had prepared a balance sheet and he said he had. What he prepared the balance sheet from, would have to be testified to and what he knows.

The Court: You object to that on the ground of lack of foundation?

Mr. Smith: Lack of foundation as to comparative balance sheet of five years because they are too remote.

The Court: We might get this cleared. Go back to the old bromide that the Court supposedly, at least, has some ability to evaluate testimony.

Mr. Smith: Yes, your Honor.

The Court: And consider the matter of weight, the remoteness. We have a little fear of putting these things before a jury. Now I gather that perhaps all of you are going to make offers that are going to be a little remote from the year 1950 cut-off. I can't see how the Court can get a fair picture of the 1951 situation without having a little

(Testimony of John K. Buxton.)

[20] extension of time on one or the other in that period and I am inclined in the meantime not to rule too strictly on the grounds of remoteness, but I can assure you that the factual situation of recent years are not going to come into the Court's thinking when it works out any determination of the case. The Court is familiar with the economic situation that has prevailed in the ranching and livestock industry and in view of that I think what we are trying to get in now will perhaps, in the ordinary case, be subject to objection, is very helpful.

Mr. Smith: Well, if the Court please, on that basis we will withdraw the objection to the comparative value here because after all what we are trying to do is to determine a full determination of it. On the other hand, I did not want to sit by and not have an objection that if valid it would be overlooked.

The Court: Your objection is certainly valid, but in answer to that, I give you some idea of the Court's thinking. Do I understand the objection is withdrawn?

Mr. Smith: We will withdraw on that basis as to [21] comparative balance sheet.

Mr. Macomber: May the answer stand then, your Honor?

The Court: The answer that was previously stricken for the purpose of permitting an objection by counsel, will stand, the objection having now been withdrawn.

(Testimony of John K. Buxton.)

Mr. Macomber: At this time I offer in evidence the comparative balance sheet of the Diamond-S Ranch from 1953 to 1956, being defendant's B for identification.

The Court: The offer will be admitted in evidence and will bear the same letter B.

Q. Mr. Buxton, in preparing this balance sheet and in going over the books of the Diamond-S Ranch corporation, did you find anything wrong with the books?       A. Yes.

Q. What?

A. Explicitly I found that throughout the years, even prior to the year 1950 and years we are speaking about, the subsequent years, the bookkeeper then in charge of the books failed to capitalize certain items of improvement and building improvements, etc., on the ranch throughout its entire life period.

Q. The figures were all there, however?

A. The figures were all there, but they were expenses instead of capitalized.

Q. But the bookkeeper charged certain items of expense that in [22] fact should be capitalized?

A. That is right.

Q. And you sought to correct that?       A. Yes.

Q. How have you sought to correct that?

A. I took the steps—first of all, I came over to the ranch and with you and Mr. Wahyou I made a personal survey of all the improvements on the ranch and I drove around and he pointed out to me and described and I visually inspected all of

(Testimony of John K. Buxton.)

the improvements that had been made to the land. Then through what information we could get from the books and records, what information was known first-hand from people concerned at the time, I arrived at the value of these improvements that should have been put on the books and dates on which they should have been put on the books and thereafter it is my intention to correct the books and records and income tax returns to reflect the proper capitalization of these items.

Q. I show you defendant's Exhibit C for identification and ask you if this is the adjustments that you made to adjust the balance sheet as of December 31, 1956?      A. Yes it is.

Mr. Macomber: I offer—

Mr. Smith: Just a minute. We haven't seen it.

Mr. Macomber: You have a copy of it.

Mr. Smith: Which one is it? We don't know what you [23] have.

Mr. Smith: Your Honor, we seriously object to the introduction of this Exhibit C, on the ground that it is pure conclusion on the part of the man who made the corrections. There was reconciliation from which are no documents before the Court to substantiate the position taken by the auditor. The year in which these various items were placed upon—or the improvements were placed upon—the ground are not reflected year by year in the balance sheet. It is simply a figure that has been picked out of thin air, without any basis having been laid for it other than his state-



(Testimony of John K. Buxton.)

ment that he made an appraisal of the property himself and was told what they cost.

The Court: May I see the offer?

Mr. Macomber: I might say I really do not care whether this goes in evidence or not. This is for the plaintiff's benefit, your Honor.

The Court: I would assume that perhaps the end result of this would be to show the higher capital valuation.

Mr. Macomber: It would have this effect—I don't want to tell the Court that all these items are written off and again I want to show the true picture. These items are still there, which would lower the net operating loss, not raise it.

The Court: Objection sustained.

Q. Mr. Buxton, do you have a record of the capital advances made [24] by the stockholders with you?      A. Yes, I do.

Q. Do you have it by years?

A. Not by years. I have the total at the termination of this period, 1956.

Q. What are those totals?

The Court: What is this document?

Mr. Macomber: It is entitled, "Advances made by Stockholders."

Mr. Smith: We object on the ground there is no showing where it came from. As a second ground, it is total from 1950 and it is too remote, has no bearing on the matter before the Court.

Mr. Macomber: This is just a breakdown of one item in the balance sheet, your Honor.

(Testimony of John K. Buxton.)

The Court: Well, it is a breakdown of one item of the balance sheet which is now in evidence?

Mr. Macomber: Yes, your Honor. It is breakdown of the item "Stockholders' Advances."

The Court: On that statement, counsel, do you still stand on your objection?

Mr. Smith: Well, your Honor, it appears a breakdown by years in the exhibit which you had heretofore admitted. Now he brings a detailed offer, having broken down in years, and it is irrelevant for any purpose, because already he has [25] it broken down by years in an exhibit. It has no standing alone, it is meaningless.

The Court: I can't quite see the materiality of the offer, but it may have escaped me.

Mr. Macomber: I want to show which of the stockholders advanced. We have total amount of stockholders' advances.

The Court: How would that assist the Court?

Mr. Macomber: Well, it would show this, your Honor—the contention here is made, as I understand it, by this that Nutting profited illegally by his purchase of Corbari's stock. I want to show that on the contrary he did not. He put great amounts of money into this company, which he has no expectation or hope of recovery.

Mr. Smith: That, of course, has nothing to do with the transaction.

Mr. Macomber: If he had made a million dollars on the purchase of this stock, certainly that



(Testimony of John K. Buxton.)

would be immaterial. If he lost a million dollars by the purchase, that would be material.

Mr. Smith: It is what happened during May, 1951 that is material. Thereafter, if they lost thousands of dollars it is immaterial. It is what the condition of the company was on May 21, 1951 that is before the Court. A great many things could have happened by mismanagement, break in the markets, it is immaterial if on May 21, 1951 it showed a value in excess of [26] what he paid.

The Court: I agree with that, in a broad sense you are absolutely right, but there might have been many factors which in the meantime gave a value in excess of face value. That is what I am interested in. The objection is overruled. This is a matter in which there is a question of fraud. The scope of admission of testimony in fraud is before the Court and as I have already said, anything that seems to shed any light is going to go in. Has this been offered?

Mr. Macomber: No, I have not offered it. I have asked him to give us the information as he has on hand, data from the books as to each stockholder's advances.

Mr. Smith: Your Honor, it should be in evidence before it is testified to.

The Court: I would think so, counsel. I have it marked for identification. The offer will be marked defendant's Exhibit D for identification.

Mr. Macomber: I offer in evidence defendant's D.

(Testimony of John K. Buxton.)

Mr. Smith: And we again renew our objection to it on the ground it has no comparative value and what individual [27] stockholders have done in relation to the corporation is immaterial and irrelevant to this proceedings.

The Court: I agree that this is a proper observation except as to the defendant Wahyou. The Court is of the opinion it may have some pertinent value as to him. For that reason the objection is overruled and the offer is received in evidence as defendant's Exhibit D.

Q. Mr. Buxton, this shows stockholders' advances, K. R. Nutting, \$319,571.32 outstanding as of December 31, 1956, and Sam Wahyou stockholder's advances \$214,091.20, and F. H. Hogue, \$235,354.52, and others of \$46,100. Can you tell us what those others are?

A. The others are composed of certain advances that have been made by various companies owned by Mr. Sam Wahyou.

Q. Were any of those advances made by Mr. Corbari? A. None.

Q. Mr. Buxton, did you prepare an analysis of capital expenditures of Diamond-S Ranch Company from the year 1952 to date? A. I did.

Q. To show what was expended in capital improvements on the property? A. That is right.

Q. Do you have that broken down by years and by items? [28]

A. I do.

Q. I show you defendant's Exhibit E and ask

(Testimony of John K. Buxton.)

you if that document was prepared from the books and is an accurate representation of what is contained in the books?

A. These were prepared from the books and they are accurate and each figure may be substantiated.

Mr. Macomber: I offer this in evidence, your Honor.

Mr. Smith: We object to defendant's Exhibit E on the ground it is incompetent, irrelevant and immaterial and there is no proper basis laid, proper foundation laid, for admission of the exhibit.

The Court: Well, counsel, going into the matter of foundation, he has testified that he has in his possession all of the original bookkeeping and records, that he compiled this document from the books and records. Now do you desire to question on voir dire as to foundation?

Mr. Smith: I would like at this time to ask a few questions because early this last fall there was an order for production made by this Court for records. It is almost impossible to find any records and I would like to find out now where these records came from that these items are compiled from.

The Court: I think you are entitled to the information. [29] We will take the usual morning recess at this time and I assume you gentlemen will work out a stipulation as to the carrying capacity of the ranch.

Counsel: That is correct.

Recess taken at 11:00 o'clock.

11:15 a.m.

The Court: You may proceed.

Mr. Macomber: If the Court please, before we proceed with this witness, counsel has two items we would like to enter. One, this Court will take judicial notice of the laws of California——

Mr. Smith: So stipulated, your Honor.

Mr. Macomber: And the next stipulation is this, that we have here a copy of letter from the agent in charge of the government Grazing Service to Diamond S Ranch, showing that it has these grazing privileges. This is dated July 27, 1950, but this is the closest date we can get. It is stipulated this shall apply to 1951.

Mr. Greenfield: Yes.

Mr. Macomber: And shows 1771 AUMs on the federal range and 1921 AUMs on leased land, or a total of 3692 AUMs altogether, and that is for five-months' period.

Mr. Greenfield: Well, the period, your Honor, carries just from year to year, but anyway it is the AUMs, so that is [30] not material, really.

The Court: You wish to offer that in evidence?

Mr. Macomber: Yes, by stipulation I offer this.

The Court: The stipulated offer, being a copy of letter from the Grazing Service, July 27, 1950, dealing with the first grazing rights of the Diamond S Ranch Company, is admitted in evidence as defendant's Exhibit F. The judicial notice of the Court going to the California laws, I assume goes to the sections which have been referred to by re-

spective counsel and applicable to the Wahyou transaction.

Mr. Greenfield: And if your Honor please, I further specify Section 2235 of the Civil Code of California.

Mr. Macomber: Also goes, of course, to the authorities I have cited in my briefs.

The Court: Yes. The position of both of you is that the bona fide of the pledged sale is to be determined by the facts shown in evidence, plus the Civil Code. Now you want to ask some questions, Mr. Smith?

#### MR. BUXTON

resumed the witness stand.

#### Voir Dire Examination

Q. (By Mr. Smith): Mr. Buxton, when did you first become the auditor or [31] accountant for Mr. Wahyou in the Diamond S Ranch?

A. About the first of this year.

Q. And what did you find in the line of books concerning the financial transactions of the Diamond S Ranch Corporation?

A. Expressly this — the books are complete in every sense, showing the receipts and disbursements, journals and the general ledger from the year 1953 on. The year 1952 are on work papers but they have been audited, examined and attested. Prior to 1952 the records were substantiated by the tax returns, goes from the beginning of the corporation, 1945, on through. The explicit items that we



(Testimony of John K. Buxton.)

are concerned with here, such as improvements, land and ranch improvements, are found in detail in the records from the beginning.

Q. Now you say the items we are concerned with here are in detail in the record, is that correct?

A. Right.

Q. Are we not concerned with all of the items concerning the financial transactions of the Diamond S Ranch?      A. I think we are, yes.

Q. Then are all of those records available at the office of the Diamond S Ranch?

A. The records are available, the ones I spoke of are available in the office of the Diamond S Ranch. All the records I spoke of are available and prior to that bank statements are available. We can build back, which we did. We built all the records back [32] from the years we had, on back to the beginning period.

Q. As a matter of fact, when you took over as auditor, excepting for the general ledger, from the commencement of the corporation up to the year 1953, there were practically no records, were there?

A. I will disagree with you for the year 1952. There are complete records for 1952.

Q. Up to 1952 there were practically no records?

A. No records in the sense of formal records. There are some records; there are bank statements, from which any set of books could be built.

Q. Then these records which you now produce are records which you have built yourself?

(Testimony of John K. Buxton.)

A. That is right.

Q. And from cancelled checks, from invoices and such other material of like nature that you could find in the office?      A. Prior to 1952.

Q. There was no record of any kind worthy of the name of that at the time you started in, is that correct?      A. Prior to 1952.

Q. Now the defendant's Exhibit B, which is denominated, "Diamond S Ranch Comparative Balance Sheets", does that sheet reflect what you found in the books, or does it reflect those alterations and changes which you made in the documents that you found? [33]

A. This balance sheet you speak of has no alterations. It is exactly what we found in the books.

Q. Now do you have a copy of that exhibit before you?      A. I do.

Q. May I call your attention to the item, "Land, \$96,000."      A. Right.

Q. You will note that item denominated "Land" starts out the year 1950 at \$96,437.42. The year 1953 it increases to \$103,539.30. Now is that the record that you found in the books?

A. With this correction, that the disparity there, which is some seven odd thousand dollars, was shown in improvements and it was not an improvement. It was shown on there dams, canals, wells, etc., so——

Q. Then, Mr. Buxton——

A. Wait a minute ——it is not a disparity of the figure whatsoever. If you take seven thousand



(Testimony of John K. Buxton.)

dollars out of that figure, then you have to add it back to sixteen thousand dollars, so I re-categorized it into its proper category.

Q. And this does not truly reflect——

A. I disagree. I say it does.

Q. Now, Mr. Buxton, let us finish the question first. Number 1, the item "Land", which you have in that Exhibit B, does not appear in the same figures in the ledgers which you took this from as such, does it? [34]

A. It does. Simply because——

Q. Just a minute, simply answer my question as asked. Does it appear that way or doesn't it?

A. Yes.

Q. Do you mean to state, then, that the ledger, under the item of "Land", which was the way it was capitalized and set up for the year 1953, shows the sum of \$103,539.30?

A. It doesn't classify that at all. The record shows simply the whole figure as one figure. I re-classified them, I reclassified that as land rather than classify as buildings and canals. I am not altering the record whatsoever. I am simply classifying it. As your record shows, you do not even have those records broken down. I have taken the trouble to break down in the type of item. I am not altering the figure, I have broken down into the proper category.

Q. Then is that true of any of these other items?

A. Such as?

Q. Well, you have the exhibit before you. Have

(Testimony of John K. Buxton.)

you made any other changes?

A. I have broken down lands from depreciable items and that is all, machinery and equipment. In some cases machinery and equipment might have been no improper figure, but he showed it in his books simply as one figure, depreciation assets.

Q. And you have reset all the books?

A. I have not reset. I have reclassified them for the purpose [35] of the balance sheet, to make more clear, more understandable.

Q. I mean in the books you made those corrections, so that you now have these items as they are set forth on this balance sheet?

A. I didn't make the corrections in the books. I simply classified them for the statement.

Q. So the books remain as they were at the time the two reports were furnished us, in every respect?

A. That's right.

Q. How much time did you spend in setting this up, Mr. Buxton? How long did it take to work these records up?

A. Oh, I have been working on it for the last three weeks.

Q. Did you have any assistance during that time?

A. Yes, I had assistance of the chief accountant of the Diamond S, Mr. Sellers.

Q. Had he done any work on these books prior to this time?

A. Yes.

Q. What had he done?

A. Done the normal work for such 1955 and

(Testimony of John K. Buxton.)

1956 entries and gone back and corrected, realigned and adjusted some of the entries made, built the balances together properly and generally straightened up the books.

Q. Until some point in the year 1952, until you came there three weeks ago and set these things up, there were no books actually worthy of the name, nothing you could determine the position of the corporation, is that correct? [36]

A. I would say from 1952 on——

Q. I said prior to 1952, that is true?

A. Prior to 1952 we had inspected tax returns. It is pretty good evidence.

Q. That is all you had; the receipts, the checks and all the various other things were scattered widely. You had to find some things in one place and some in another and you got them all together for the set of figures?

A. All in the office.

Q. At least they were not entered in the books, so prior to 1952 that condition existed up until three weeks ago. Now turning to the balance of your exhibit, which I believe is Exhibit B, there are two more sheets on it. Those last two sheets were not admitted, were they, your Honor?

Mr. Halley: That is Exhibit C, I think, the objection was sustained.

Mr. Smith: Yes.

Q. One further thing, Mr. Buxton. Where did you get your inventory of livestock?

A. They were inventories that we had for physical at the close of 1954 and physical figure at the

(Testimony of John K. Buxton.)

close of 1955. I made a list of inventories. Those are the years we are concerned with.

Q. What about inventories of livestock for those years?      A. I can't be positive——

Q. What did you use for the basis of your inventory of livestock? [37]

A. From figures shown on the tax returns.

Q. And nothing else. Did you make any attempt to segregate out the checks purchased for livestock, etc., or to make any other search other than the income tax returns?      A. No sir.

Q. Or for any years prior?

A. Prior to 1952, no, it wasn't necessary.

Q. Mr. Buxton, in the matter of your judgment what was necessary, it is what you did I am trying to get at; so that, for the years 1952 and prior, such evidence as there was on the income tax returns is your basis for your figures, and nothing else. Is that correct?      A. Correct.

Q. Now as to the valuation of the buildings on the land. How did you determine those?

A. Valuations on buildings, as I stated, I reviewed the present condition of the building and reviewed whether there were any improvements made. There were no changes, no corrections in that figure as they stand. Generally only a few hundred dollars there at the end, which I can verify.

Q. Now, Mr. Buxton, you have here an item under liabilities, "Chattel Mortgages on Livestock." The document, Exhibit B, shows in the year 1950, \$85,191.00 and for the year 1951, \$181,000.00, and

(Testimony of John K. Buxton.)

the next year, 1952, of \$421,000.00. Did you get those items off the books, or did you get evidence from [38] other sources as to those items?

A. First, may I correct—you call those chattel mortgages. That rather is stockholders' advances.

Q. Your figure is \$86,620.00 as to chattel mortgages on livestock. A. That is right.

Q. Where did that figure come from?

A. That figure came from the records in evidence of the tax returns for the year 1951 and subsequently were paid off and disappeared in 1952.

Q. And there are none in 1952?

A. That is right.

Q. Can you tell from your records what time they went off or it was not there in 1952?

A. No, I can not.

Q. All you know for sure it was off in 1952, is that correct? A. That's right.

Mr. Smith: That's all, Mr. Buxton.

The Court: Continue your direct.

#### Direct Examination—Resumed

Q. (By Mr. Macomber): I believe in my direct I had offered in evidence, your Honor, this document that is marked Exhibit E for identification. I renew my offer.

Mr. Smith: Did you furnish us a copy of that?

The Court: Analysis of capital expenditures for 1950 to date, is that it? [39]

Mr. Macomber: It shows the rights prior to 1952 and what items of capital expenditures have been



(Testimony of John K. Buxton.)

made from 1952 to date and the years' classifications.

Mr. Smith: Are you offering it?

Mr. Macomber: Yes.

Mr. Smith: We object to the offer, your Honor, on the grounds it is incompetent, irrelevant and immaterial.

The Court: Objection overruled. The offer may be received in evidence.

Q. Mr. Buxton, your income tax return for the year 1950 and the financial statement of the Diamond S Ranch Company for that same year, is there some discrepancy?

A. For the year 1950?

Q. It is either 1950 or 1951. 1950, I think.

A. I don't recall. I made some adjustments. Somewhere back in there the accountant who was doing the work reduced his fixed assets for full depreciated items; in other words, his cost. Now I adjusted that to reflect the cost assets. It has no actual effect on the balance sheet because you show a larger asset and a larger liability depreciation, but I did get together the correct items to begin with by identification and showed the adjusted depreciation, and those records were all found.

Q. This analysis of capital expenditures account, tell the Court what it shows in capital expenditures prior to 1952. [40]

Mr. Smith: The exhibit speaks for itself.

Mr. Macomber: Let's summarize it for the Court.

A. Prior to 1952—



(Testimony of John K. Buxton.)

Mr. Smith: Just a minute. I made an objection on the ground the exhibit speaks for itself.

The Court: Certainly the objection is a valid one, but the Court seeks all in this matter. If this witness can explain the exhibit, it will assist the Court. Objection overruled.

Q. The cost of improvements prior to 1952 was \$137,545.11 and since 1952 up to December 31, 1956?

A. The subsequent improvements on the books were \$104,633.05.

Q. Now what were the improvements prior to 1952, not counting the land?

A. Not counting the land then they would be some thirty-four thousand odd dollars.

Q. But including the land it is the figure you gave?

A. Including the land it is one hundred thirty-seven thousand. The land is shown at the one hundred three thousand figure, so it is thirty-four thousand plus.

Mr. Macomber: That's all.

#### Cross Examination

Q. (By Mr. Smith): Mr. Buxton, you have been testifying as to values here as to various items. Now those are strictly book values, are they [41] not?

A. What do you mean by book values?

Q. That is a figure which came from the books, either as cost or arrived at in some other way, depreciated cost, or something else? It has nothing to do with the actual value of the property?

(Testimony of John K. Buxton.)

A. These figures we are talking about here——

Q. No, I am not talking about that. You have been talking about values. You gave the land value, I believe, at ninety-five thousand and another place one hundred three thousand, whatever the figure was. Now that is book value of the property, isn't it?

A. It is cost value.

Q. Well, cost and the book would be the same, excepting for your depreciation?

A. That is right, with that exception.

Q. All right; but you are talking about either cost or book at one time or the other here. I mean it doesn't in any way reflect the true value, does it, the market value?

A. No.

Q. So any figure you have given is either cost or book?

A. I can't answer yes to that because book and cost has a definite understanding with me.

Q. All right, Mr. Buxton, will you clearly state to the Court what values you did use? [42]

The Court: Are you trying to get over to the Court the fact that these do not represent sales value?

Mr. Smith: That is correct.

The Court: He said they didn't.

Q. Did you make new tax returns for this corporation, based upon the changes, the errors, that you discovered?

A. Not as yet. I intend to amend the 1956 and prior returns, as far as I can, which means three years.

(Testimony of John K. Buxton.)

Q. But that has not yet been done?

A. That has not as yet been done.

Mr. Smith: That's all, your Honor.

The Court: You may be excused.

SAM WAHYOU

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Macomber): Your name is Sam Wahyou? A. Yes sir.

Q. Where do you live, Mr. Wahyou?

A. Stockton.

Q. And are you a stockholder in the Diamond S Ranch Company? A. Yes.

Q. Are you an officer in the Diamond S Ranch?

A. Yes.

Q. And an officer, are you? [43]

A. President.

Q. And you have been since the corporation was formed in 1945? A. Yes.

Q. And you have been a stockholder all that time? A. Yes.

Q. By the way, do you know what the term of the Milem lease is? A. Year by year.

Q. Before this suit that we are engaged in trying here today was brought against you and the Diamond Ranch Company, did you know that Corbari had made an assignment to the John Smeed estate? A. No.

(Testimony of Sam Wahyou.)

Q. At the time of the sale of the Corbari stock on May 21, 1951, was Mr. Corbari a director of the corporation? A. Yes.

Q. And was he operating the ranch at that time as superintendent? A. Yes.

Q. At the time you purchased Mr. Corbari's stock on May 21, 1951, did Mr. Corbari owe you any money? A. Yes.

Q. You purchased his note secured by an assignment of the stock from the Bank of America?

A. Yes.

Q. For how much money? [44]

[Answer missing.]

Q. And were there any special facts, anything known to you at that time, or the time you purchased this stock, which would lead you to believe that this stock had any particular great value?

A. No. Somebody——

Mr. Greenfield: Just a minute—I object on the ground it is too indefinite and vague, too general.

The Court: I think the objection is good, counsel. I wouldn't know what you mean by special facts.

Mr. Macomber: Well, any special circumstances, things that would lead him to believe this stock had a greater value than would be apparent to any other person.

Mr. Greenfield: Same objection, your Honor.

The Court: I think, counsel, you may reach the point you are trying to make—the question is——

Mr. Macomber: It is hard to prove a negative

(Testimony of Sam Wahyou.)

and that is what I am trying to do, but I have to do it sort of step by step to show what he had in his mind at that time.

The Court: Very well, you may proceed then, if that be your position, and counsel has a right to object.

Q. Now before you bought Mr. Corbari's stock, did you know that the bank was going to foreclose?

A. Yes. [45]

Q. Had anybody, any officer of the Bank of America, Hunter Square Branch, either written you or talked to you about it?

A. They sent me a letter.

Q. And do you have that letter?

A. No. I have it at home.

Q. Did they write you more than one letter?

A. Oh, two or three letters.

Q. Do you recall what they said in the letter?

Mr. Greenfield: We will have to except to that. That is hearsay.

Mr. Macomber: It wouldn't be hearsay and I ask the answer go in and be limited to what effect it had upon his mind.

The Court: For that limited purpose, it may be admitted.

Q. What did the letter say?

A. I can't remember exactly what the letter was. He asked me—to tell me about the foreclosure, the stock, so he asked me to buy it, so I went down and talked to him, talked to him and finally I bought it and I arranged the deal with the bank

(Testimony of Sam Wahyou.)

and completed the papers to buy the stock, so I sent my lawyer, Mr. Macomber, to pay the bank for the transaction.

Q. Did you know if the bank were negotiating with any other person to buy that stock?

A. Yes. [46]

Mr. Greenfield: Just a moment, your Honor. In the first place, I think it is irrelevant or immaterial whether the bank was or was not negotiating. In the second place, unless the witness can show, to a greater extent than he has, how he knows, I think the question is improper. It is hearsay.

The Court: I think it is getting around to hearsay. It is pretty obvious.

Mr. Macomber: It probably is, except I stipulated his testimony would be limited to the effect upon his mind.

The Court: Well, his method and intention is rather important here and perhaps it should not be permitted to be built up on hearsay. Objection sustained.

Q. At the time you bought Mr. Corbari's stock, did you have an opinion as to what the value of that stock was at that time?

A. Oh, I felt that the ranch had a future. The stock was worth more than five thousand dollars. I felt it was worth the money because the reason I bought the stock I didn't want somebody outside to hold the stock. That is why I bought it. He owed me money and so I thought it was a pretty fair buy for what I paid for it, so I bought it.



(Testimony of Sam Wahyou.)

Q. You expected to make money on it?

A. Oh sure. I wouldn't invest unless I make money.

Q. Did you make any money as the result of your purchase of this stock? [47] A. No.

Mr. Greenfield: I want to object on the grounds it is irrelevant and incompetent, and explain to the Court why I strongly feel that this particular line of testimony is irrelevant and immaterial. It may well be, that as the Court has said, it is material, the financial condition of the Diamond S Ranch Company over a five-year period, but I do not think it is material as to whether or not Mr. Wahyou made money or did not make money out of this transaction. I certainly object to it on that ground.

The Court: Well, you have consented——

Mr. Greenfield: Let me try again. I mean this, your Honor, if the purchase of Mr. Corbari's stock by foreclosure by Mr. Wahyou was an improper, unfair act and was a violation of fiduciary position of trustee of the corporation, then whether he lost or profited in subsequent years by his improper act and his breach of his fiduciary position is certainly irrelevant as to whether or not the transaction here stand or not stand, and that is what I mean.

The Court: I go along with you but I am presently of the opinion, for what it is worth, whether he lost or made money is something depending on the nature of the answer that may or may not be considered by the Court. It may have some materiality and on the [48] other hand it may not.

(Testimony of Sam Wahyou.)

Mr. Macomber: I would like to point out, I know the Court has overruled the objection, but I do want to say this, if Mr. Wahyou, as a result of buying this stock, had made a large sum of money on it, then the Court may be able to conclude that he had some special knowledge or something about this stock when he bought it, knowing it was worth more. In other words, the proof of the pudding is in the eating, and if Mr. Wahyou made a large sum of money as the result of his purchase of that stock, even up to date, I am sure the plaintiff would like to show that it would be very material evidence, and that is his contention, I think.

The Court: As I said, the Court knows it is going to weight. It may be entirely valueless; on the other hand, it may have some value relating to circumstances. Let us get back to the question.

Q. Did you make any money as the result of your purchase of the Corbari stock? A. No.

The Court: I might say at this point, on that answer "no," standing as it does in isolation, does not mean anything at all. That is not an explanation. That merely backs up what I said previously.

Mr. Macomber: Of course, the detail of it would be in the books and records of the corporation, your Honor.

The Court: I think, inasmuch as this witness will be on for some considerable time, we will take our recess. The Court will be in recess until 1:15.

(Recess taken at 12:00 noon.)

1:15 P.M.

The Court: The witness Wahyou was on the stand.

Mr. Halley: Yes. If the Court please, we would at this time ask to call a witness out of order, who is here from Stockton, who will testify concerning actual foreclosure sale. I would like to put him on and let him go back to Stockton if agreeable.

The Court: Any objection?

Mr. Smith: No.

The Court: Very well, you may put the witness on out of order.

GORDON J. AULIT

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Halley): Will you state your name please? A. Gordon J. Aulit.

Q. Where do you live? A. Stockton. [50]

Q. What is your business or profession?

A. Lawyer.

Q. How long have you been engaged as a lawyer in Stockton? A. Since 1949.

Q. You were practicing there in Stockton on the 21st of May, 1951, were you? A. I was, yes.

Q. Do you recall an incident on that day in which you were acting as agent of Sam Wahyou?

A. Yes, I do.

Q. Did that incident consist of attending a foreclosure sale of pledged stock?

(Testimony of Gordon J. Aulit.)

A. Yes, I attended such a sale.

Q. Where did you attend the sale?

A. It was at the south entrance of the San Joaquin courthouse, also known as the Main Street entrance of the courthouse.

Q. That is in Stockton? A. Yes.

Q. Who was present at that time?

A. Mr. Macomber and myself.

Q. What transpired?

A. Well, we went over to the south entrance of the courthouse immediately before the time set for the sale, Mr. Macomber and myself, and upon arriving at the south entrance, the Main Street entrance, Mr. Macomber conducted the sale, checked the time to [51] determine he was conducting the sale on schedule, checked, as I remember, with his watch and my watch and with the clock on the corner of the Stockton Savings & Loan Bank Building, and at the time appointed the sale was conducted.

Q. What did Mr. Macomber do?

A. Mr. Macomber, upon checking the time, read the notice of sale.

Q. Did you hear the notice read?

A. I heard it read.

Q. Did you check the time mentioned in the notice against the clock, and these other instructions?

A. Yes, we checked the time and it was accurate.

Q. Did you check the date?

A. Yes, checked the date also.

(Testimony of Gordon J. Aulit.)

Q. After the notice was read what happened?

A. Mr. Macomber asked if there were any bids for the property being sold.

Q. What property was being sold?

A. Shares of stock, three hundred ten shares of stock, and I stated on behalf of Sam Wahyou I bid five thousand five hundred dollars. Mr. Macomber then asked if there were any other bids. There were no other persons actually present, other than walking in the area, because it is the entrance to the courthouse, but no other persons actually in the immediate vicinity attending the sale. He then called \$5500 once, called \$5500 a second time [52] and called \$5500 a third time and sold it for \$5500.

Q. Upon your bid?

A. Upon my bid for Mr. Wahyou.

Q. On behalf of Mr. Wahyou?           A. Yes.

Q. That was the amount of the note that Mr. Wahyou was holding?

A. To the best of my knowledge, yes.

Q. You say there were people going in and out of the courthouse when this happened?

A. Naturally at that hour there would be, yes.

Mr. Halley: You may examine.

#### Cross Examination

Q. (By Mr. Greenfield): What is your relationship of Mr. Macomber?

A. I am employed by Mr. Macomber, as well as maintaining my own practice in his office.

Q. That situation prevailed in 1951?



(Testimony of Gordon J. Aulit.)

A. Yes, it did.

Q. Then as a matter of fact Mr. Macomber, on behalf of Mr. Wahyou, dispatched you to act as Mr. Wahyou's agent in this instance?

A. Yes, that is correct. He asked me to attend the sale.

Q. You were aware, of course, at the time that Mr. Macomber was Mr. Wahyou's attorney?

A. Oh yes.

Q. Were you familiar with the Diamond S Ranch Company's file [53] in your office at that time?

A. No, I was not. I might have some familiarity with some portions of it, but I couldn't tell you right now what portions. Naturally I would run across it, being in the same office.

Mr. Greenfield: That is all.

### SAM WAHYOU

resumed the witness stand on further

#### Direct Examination

Q. (By Mr. Macomber): Have you made any effort to sell this ranch? A. Yes.

Q. At what different times?

A. Many different times, '48, '49, '50 I tried to sell it.

Q. Have you asked different real estate men to try to sell it? A. Oh yes.

Q. What sales price were you asking?

A. Well, different times different prices. One time we set it for one hundred ninety thousand;



(Testimony of Sam Wahyou.)

one time we had a party interested for two hundred forty thousand dollars. The deal didn't go through because the people didn't come up with the money, and as time went on, we asked more money because we put a whole lot more money in all the time.

Q. And it is for sale, is it, now? A. Yes.

Q. Have you ever had any concrete offer for the property? A. No.

Q. That is, anything that you could accept and make a deal out of? [54]

A. No. I have talked to a lot of people about it, but never had an offer yet.

Mr. Macomber: That is all. You may cross examine.

#### Cross Examination

Q. (By Mr. Greenfield): Mr. Wahyou, Mr. Macomber is your attorney at present. How long has he been your attorney? A. Oh, twenty years.

Q. And he has been attorney for the Diamond S Ranch Company since its inception?

A. He is attorney——

Q. For the Diamond S Ranch Company since it began? A. Yes.

Q. As your attorney and attorney for the Ranch Company, do you keep him well advised of the Ranch Company's affairs? A. Sure, yes.

Q. You always have? A. Yes.

Q. Mr. Wahyou, you stated that you endeavored to sell this ranch numerous times. Did you try to sell it, say in 1954? A. 1954—yes.

(Testimony of Sam Wahyou.)

Q. What price did you have on it at that time?

A. In 1954—I can't remember, but '54 close to a million dollars.

Q. Did you consider a million dollars to be a fair price for it? [55]

A. Well, I never can get a million dollars because——

Q. Just a moment—answer that question. In 1954, when you had the ranch for sale at a stated price of a million dollars, did you consider a million dollars was a fair price for that ranch? Yes or no.

A. A pretty good price, yes.

Q. Now in 1954, Mr. Wahyou, did you succeed in borrowing some money on the property?

A. Yes.

Q. How much money did you borrow?

A. Two hundred twenty-five thousand dollars.

Q. From whom did you borrow it?

A. Central Valley Bank.

Q. Before you borrowed that money, did you ask an official of the Central Valley Bank to make an appraisal of the ranch?

A. Yes.

Q. Was that appraisal made?

A. Yes. I didn't—they make the appraisals.

Q. Yes, but the appraisal was made, wasn't it?

A. Yes, the bank sent two people out there.

Q. And you asked them to do that?

A. Yes.

Q. Was the appraisal made by Mr. Wisecarver?

A. Yes.

Q. What was the amount of the appraisal? [56]

(Testimony of Sam Wahyou.)

A. I don't know.

Q. Would the sum of \$487,300 as the amount of the appraisal be correct?

A. Well, I don't know what they appraised it for. I wanted to borrow money.

Q. Do you know what percentage the bank was loaning at that time of the appraised value?

A. That I do not know.

Q. Would it have been fifty-five per cent?

A. Well, I don't know what they base it on.

Mr. Greenfield: Your Honor, may I have the deposition of Robert Wisecarver, which is in the Court's file? The deposition, if the Court please, has, of course, not been opened. May we request it be opened at this time?

The Court: The deposition may be published and opened.

Mr. Greenfield: Now would the clerk mark that as an exhibit? The plaintiff now offers in evidence the deposition of Robert Wisecarver, the appraiser of the Central Valley Bank, who made the appraisal of the Diamond S Ranch Company in 1954, at the request of the witness, Sam Wahyou, together with exhibit attached thereto, being the appraisal itself.

Mr. Macomber: To which the defendants object on these grounds: first, that no proper foundation has been laid in this, that it is not shown here that this appraisal was made by Mr. Wisecarver as agent of Mr. Wahyou. Mr. Wisecarver made it as [57] an officer of the bank and obviously made it

(Testimony of Sam Wahyou.)

not?           A. 1951—the question you asked——

Q. I am sorry, let me restate it. The Diamond S. Ranch Company, a corporation, had certain assets in 1951. Those assets consisted of land, didn't they?           A. Land and improvements.

Q. Now in 1954 the Diamond S Ranch Company had certain assets?           A. Yes.

Q. Those assets were the same assets as they had in 1951, weren't they, same land, same improvements?

A. No, not the same improvements.

Q. You had added some improvements?

A. Oh yes, lots of improvements up there.

Q. Do you have an opinion as to the fair value of the improvements that were added in those intervening years, between 1951 and 1954? [60]

A. I really don't know. I know we spent lots of money.

Q. But would you say that the major assets of the ranch were substantially the same both years, except for the improvements you added in the way of new buildings, a well or two and cleaning ditches and fixing the fences?

A. Well, after 1951 we fixed the fences, was a new corral, feed rooms, wells, cleaned all the ditches, new ditches, lots going on there.

Q. The same land, however?

A. The same land is right.

Q. Would you say the improvements you put on were worth more than fifty thousand dollars?

A. Oh yes, more than that.

(Testimony of Sam Wahyou.)

Q. Would you say they were worth seventy-five thousand dollars?

A. I think so. I don't know how the accountant set it up.

Q. Well, we are not concerned with the accountant right now. I am just trying to get your opinion—about seventy-five thousand dollars?

A. Well, the improvements was more than that.

Q. A greater cost to you than that. Is this between 1951 and 1954, or between 1951 and the present date?

A. Oh, you talk between 1951 and 1954?

Q. Yes. Between 1951 and 1954, or two or three year period, would you say your improvements ran twenty-five thousand dollars? [61]

A. No, more than that. We levelled some land there too.

Q. As much as fifty thousand?

A. I can't tell you exactly because I never paid very much attention to that.

Q. You don't think in those three years it ran over fifty thousand, do you?

A. Maybe, could be more than fifty thousand.

Q. Would that be close?

A. I couldn't tell you. I don't remember, because we levelled some land between those years and we put wells in and we had a dragline there to open a ditch.

Q. In other words, you don't really know?

A. I don't know. I couldn't tell you exactly how much improvements were.



(Testimony of Sam Wahyou.)

Q. All right, we will let that go. Now, Mr. Wahyou, we were talking a little while back about your purchase of this stock and your reasons for purchasing it. I think you testified that you bought the stock, the Corbari stock, I think you testified you bought it because for one thing you wanted to make some money out of it, expected to make some money out of it, and you said that Mr. Corbari owed you some money besides. Now after you purchased this stock, was it your intention to credit Mr. Corbari's debt?

A. Credit his debt? What do you mean?

Q. With the amount of the stock worth over what you paid for it. [62] You didn't have any intention of crediting Mr. Corbari with the excess value of the stock?

A. No.

Q. You were going to keep it and make what you could out of it, is that right?

A. I——

Q. Is that right?

A. Let me explain it to you, what my thinking is.

Q. All right, go ahead.

A. The reason I bought it, I believed we had a ranch we could make money out of. I had been carrying Mr. Corbari, he was in very bad condition in 1954 and he owed me money. If I hadn't bought his stock, somebody else would bought it, so I didn't think it bad for the amount of money I spent to buy his stock, and also I guaranteed another note for him. He borrowed some money——

Q. What other note was this?



(Testimony of Sam Wahyou.)

A. The fellow's name was Zignagle.

Q. How much was that note for?

A. I can't say—twelve thousand.

Q. You guaranteed that note?

A. That is right.

Q. And it was your intention then to buy this stock, to make it your own and then were you going to give him some credit on this note you guaranteed? I think you said not, didn't you? [63]

A. What credit?

Q. You didn't intend to give him any credit on the note you guaranteed or to pay any part of the note and credit him with the balance?

A. No, no.

Q. If the stock was worth twenty thousand dollars, it was your intention to keep the fifteen, is that right? A. Sure.

Q. So then one of your reasons for purchasing the stock was to protect yourself on the Zignagle note? A. Right, and also the future.

Q. And also the future? A. Yes.

Q. The future, at the time you bought it, you considered bright? A. That's right.

Mr. Greenfield: That's all, I think, your Honor.

#### Redirect Examination

Q. (By Mr. Macomber): Mr. Wahyou, on this loan, two hundred twenty-five thousand dollars, from the Central Valley Bank, did you guarantee that loan personally?

Mr. Greenfield: Just a moment—we think that

(Testimony of Sam Wahyou.)

is clearly incompetent, irrelevant and immaterial, not bearing on the issues in this case.

Mr. Macomber: That was why the appraisement was made, [64] for this loan. I want to show that the loan wasn't made simply on the strength of the property or ranch. The loan was made on other considerations; to-wit, his personal guarantee. I expect likewise to show, in connection with his personal guarantee, he gave a personal financial statement to the Central Valley Bank, upon which he listed his shares in the Diamond S Ranch, and I want to show what value he placed on the shares at that time.

The Court: You are referring to the loan made as a result of the Wisecarver appraisal?

Mr. Macomber: Yes, your Honor.

The Court: Objection overruled. Proceed.

Q. Did you personally guarantee that loan?

A. Yes. The reason he gave me the loan over there was because I asked—

Mr. Greenfield: Just a moment. I object to the answer as being unresponsive and ask it be stricken. It is purely hearsay.

(Answer read.)

The Court: I ask that you start over. The answer so far given is stricken.

Q. Do you know whether the bank would have made the loan without your personal guarantee?

Mr. Greenfield: I object—calls for conclusion as to what was in some one else's mind; incompetent.

(Testimony of Sam Wahyou.)

The Court: The bank may have said to give his personal guarantee. [65]

Mr. Greenfield: I think in that event it would be hearsay.

The Court: What was the answer?

Mr. Greenfield: There was no answer.

Q. Did the bank demand your personal guarantee on that note?      A. I gave it to them.

Q. Did the bank demand that you personally guarantee it?      A. Sure.

Q. Did you give the bank a personal financial statement in connection with your personal guarantee?      A. Yes.

Q. I show you defendants' Exhibit G for identification and ask you if that is a true and correct copy of your personal statement that you gave Mr. Wisecarver in connection with your guarantee to the bank?      A. Yes.

Q. On this statement it shows your shares of stock in the Diamond S Ranch Company——

Mr. Smith: Just a moment please. Let us not testify to the statement if the Court please, until the exhibit has been offered.

Mr. Macomber: I offer this statement in evidence, your Honor.

Mr. Greenfield: May I request the Court to glance at this exhibit, your Honor please. To begin with, you will note [66] the financial statement is of some date in 1956—December 31, 1955. How that could possibly have bearing on a loan which the

(Testimony of Sam Wahyou.)

witness has testified he received in 1954, I am unable to understand.

Mr. Macomber: It is part of the same transaction, the plaintiffs opened the door to it.

The Court: It is signed January 14, 1956.

Mr. Greenfield: But the top of it shows it is as of December 31, 1955, and I can not see how it possibly can have bearing on this transaction. It certainly couldn't have been a financial statement he submitted to the bank at the time he requested the loan in 1954.

The Court: Well, I am not commenting on this offer at the moment. I am merely saying it may be a later statement required by the bank as part of the transaction, a procedure with which we are all familiar. The banks, having executed the loan, required the person given it to make a statement.

Mr. Greenfield: As I understood it, your Honor, the exhibit is being introduced as being a true copy of the one he submitted.

The Court: Objection sustained. On the face of it, it is not connected.

Q. Mr. Wahyou, have you given the Stockton [67] Savings & Loan Bank statements in the past few years, financial statements? A. Yes.

Q. And have you listed on those statements your shares of stock in the Diamond S Ranch Company?

A. Yes.

Q. What value did you place on that stock?

Mr. Greenfield: Just a moment, your Honor. I object to the question on the ground it seeks to

(Testimony of Sam Wahyou.)

elicit a purely self-serving declaration; has no probative value and is incompetent in this action. For that reason we object to it. I might elaborate to the Court, what possible value would it be to have Mr. Wahyou state what he thought his stock was worth?

Mr. Macomber: It is his stock, he can give his opinion.

Mr. Greenfield: He has given it numerous times and I don't think the value he placed on it in the financial statement has any bearing.

The Court: The Court is of the opinion that he may state what, in his estimation, the value of the stock was, but that still doesn't furnish sufficient materiality to put in these remote statements of 1956. We are all conversant with bank statements given by a borrower to the bank. Generally they are based on wishful thinking to start with. [68]

Mr. Macomber: I will withdraw my offer.

The Court: Well, the Court has ruled on it anyway, being not admissible. We double that by withdrawing.

Mr. Macomber: That's all.

Mr. Greenfield: I think that is all we have.

(Witness excused.)

Mr. Macomber: The defendant rests, on its direct.

Mr. Pike: Your Honor, at this time, on behalf of the plaintiffs, I wish to move for judgment in favor of the plaintiffs, as prayed for in plaintiffs' complaint, and as grounds for that motion particu-



larly refer to the provisions of Section 2235, Civil Code of California, which is set out on page 6 of the plaintiffs' trial brief, and which reads:

"All transactions between a trustee and his beneficiary during the existence of a trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence."

and I refer to the decision of the Federal Appellate Court, setting out the burden of the defendant in this case to establish certain elements, and it is the plaintiff's contention [69] that the defendant has failed to sustain that proof.

The Court: The plaintiffs' motion is denied.

#### CHARLES SEWELL

a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

##### Direct Examination

Q. (By Mr. Smith): Will you state your name, please?      A. C. S. Sewell.

Q. Where do you reside?      A. Elko County.

Q. Elko County, Nevada?      A. Yes sir.

Q. How long have you been a resident of Elko, Nevada?      A. My lifetime.

Q. How old are you?      A. Fifty-five.

Q. What is your occupation, Mr. Sewell?

A. I have been in the livestock business all my life.

Q. Now if you will, elaborate on that briefly to



(Testimony of Charles Sewell.)

the Court, stating some of the properties in Nevada that you have owned and operated, the number of sheep and cattle you have operated, the experience you have had with the Taylor Grazing Act, etc., general background of your business experience as a rancher in Nevada.

A. Since 1928 I have been operating the live-stock business on my own account. My father passed away in 1928. I have operated [70] several ranches in Elko County, also Lincoln County and Owyhee County, State of Idaho.

Q. Will you name the ranches by name in Nevada you have operated and describe them briefly.

A. I owned the Tribune Ranch, the Seville Ranch, the Tanney Ranch, Gambill Ranch, Jacke Ranch, all of those were in Elko County.

Q. And did you own other ranches in Nevada?

A. No.

Q. Have you owned other ranches in Owyhee County, Idaho, which is west of Elko?

A. Yes.

Q. What did you own there?

A. What is known as the Flying H Ranch, the UD, the Levenbaugh and Burtlock.

Q. They are all located at Riddle, Idaho?

A. That is right.

Q. That is in the south central portion of Owyhee County, Idaho?

A. They lie along the Nevada State line.

Q. And the territory there, the operation is a good deal the same as the ranches you operated in Elko County, Nevada?

(Testimony of Charles Sewell.)

A. The same, yes sir.

Q. What is your academic background?

A. You mean my schooling?

Q. Your schooling. [71]

A. I am a graduate of Stanford University.

Q. What year? A. 1923.

Q. What degree? A. A.B.

Q. What did you do after your graduation from Stanford in 1923?

A. Went to work for the First National Bank in Elko.

Q. How long were you there?

A. Off and on for thirteen years.

Q. What was your position with them, what did you do there? A. I was cashier.

Q. And was that bank principally and largely interested in financing ranchers and ranches?

A. We had loans of livestock.

Q. What did you have to do with those loans, if anything?

A. Well, I was responsible for appraising them in the first place and servicing them.

Q. Seeing that if they got in trouble they got out, things of that nature?

A. That is right, seeing that we got our money.

Q. Now, Mr. Sewell, you have mentioned all the various ranches you have owned. What about the number of cattle and sheep you have owned and run in the various years?

A. Those ranches at?

Q. Riddle. [72]

(Testimony of Charles Sewell.)

A. I had rights for five thousand cattle, forty-five hundred sheep.

Q. Did you operate both cattle and sheep?

A. Yes.

Q. Over what years?

A. I operated from 1928 to 1956.

Q. As a matter of fact, it is within the last few months that you disposed of your properties at Riddle, isn't it?

A. 1956, yes sir.

Q. What about your operations of livestock in Elko County, Nevada?

A. Well, the Gambill Ranch was a very large ranch.

Q. Just relate your experience with that.

A. Had no sheep. That was in cattle. It was a ranch that had lots of range, had twelve months' permit and twelve months on the federal range.

Q. Did you operate all of the cattle on the Gambill Ranch?

A. Around four thousand.

Q. What years were involved in that operation?

A. I believe we bought the Gambill Ranch in 1949 and sold it in 1952.

Q. You ran about four thousand head of cattle on it during those years?

A. That is right.

Q. What other livestock operations have you had? [73]

A. I have been in the sheep business.

Q. Just what was the nature and extent of your sheep business?

A. The highest sheep operation I had ran forty-five hundred units.

(Testimony of Charles Sewell.)

Q. That was in Idaho? A. That is right.

Q. You never operated a sheep ranch in Nevada? A. No sir.

Q. Now, Mr. Sewell, are you acquainted with the properties of the Diamond S Ranch Company, located in Humboldt County, Nevada, and located near the town of Golconda, Nevada?

A. Yes sir.

Q. What is the nature of your acquaintance there?

A. The first time I was there on the Diamond S was in '38 and '39.

Q. What were you doing there at that time?

A. Bought a bunch of cows and calves from Stewart and Polkinghorn.

Q. At where?

A. Pumpernickle, south of Golconda.

Q. In 1938 for the first time you were on what is now known as the Diamond S Ranch in Humboldt County? A. That is right.

Q. Have you had occasion to observe it from time to time since 1938? [74]

A. I have been there lots of times.

Q. Well, have you been on the properties?

A. I was there last fall.

Q. Is the operation of that property similar to any properties that you operated up in Elko County?

A. That is very similar country.

Q. How far is it from the Diamond S Ranch

(Testimony of Charles Sewell.)

properties at Golconda to the ranches that you had in Elko County?

A. Probably eighty-five miles.

Q. And in your judgment it is a similar operation?      A. That's right.

Q. Now, Mr. Sewell, what has been your experience with the Taylor Grazing Act?

A. You mean from an operating point?

Q. From an operating point, what has been your experience?

A. Well, the Taylor grazing rights are based on the property and commensurability.

Q. And from the time it came in 1932 until today, until 1956, you have had to operate under the Taylor Grazing Act on your ranches in Nevada and Idaho?      A. It didn't come in in 1932.

Q. What year did it come in?      A. 1936.

Q. Since 1936 then you have had to operate under the Taylor Grazing Act? [75]

A. That is right.

Q. You have had reason to determine values of Taylor grazing rights as they bear to the real property to which commensurability was attached?

A. That is right.

Q. And is there some rule of thumb which you used to determine the value of operating a ranch in comparison to the Taylor Grazing rights?

A. Well, a ranch without any Taylor grazing rights wasn't worth very much money.

Q. What is the rule of thumb, as near as you

(Testimony of Charles Sewell.)

know, if you do know, that animal unit bears to the price of the ranch?

A. Well, that depends on the value of the livestock. If livestock is high, values are higher.

Q. All right, are you acquainted with the price of livestock in 1951?

A. I was in the business at that time.

Q. Mr. Sewell, you mention you were on the Diamond S properties in 1956 again?

A. That is right.

Q. Will you state to the Court generally what you did at that time on the property?

A. I was there at the request of the plaintiffs in this action, to make a determination what I thought it was worth.

Q. Who accompanied you on this inspection?

A. Mr. McDowell and Mr. Jack Utter.

Q. Mr. McDowell of Boise? A. Yes, sir.

Q. And Mr. Utter of Reno? A. Yes, sir.

Q. What type of examination did you make, briefly state?

A. Well, we went out to the Diamond S and spent parts of three days, most all of three days, driving around the fields, driving to the wells, driving up to the reservoir, all around the ranch.

Q. You measured the buildings?

A. Measured the building headquarters.

Q. Did you determine, from your knowledge of the ranch beforehand and your knowledge of the ranch as the result of this inspection, what would



(Testimony of Charles Sewell.)

be its most useful use, most profitable use, as a ranch?

A. I think there is only one use put it to.

Q. What is that use? A. Raising cattle.

Q. And as a cow and cattle outfit, would you say?

A. Well, I think you could either do that or raise feeders, buy feeders and run them through the season.

Q. Now, Mr. Sewell, to your knowledge of the live stock industry generally, knowledge that you gained from the inspection of the Diamond S Ranch property—by the way, before I ask—your Honor, may I withdraw the question? [77]

The Court: The question may be withdrawn.

Q. Mr. Sewell, when you made inspection of the Diamond S Ranch properties, did you make any study of the water rights in connection with it?

A. The water rights in the Humboldt River are all adjudicated and adjudged.

Q. And you looked into that adjudication?

A. Yes sir.

Q. You know what is appurtenant to the properties we are now discussing?

A. It has some very old rights there.

Q. And did you go to the Taylor Grazing office in Winnemucca and determine what rights were appurtenant to the various properties and leases?

A. Yes sir.

The Court: What are you talking about now? You are talking about water?

(Testimony of Charles Sewell.)

Mr. Smith: I asked him if he had determined what the grazing rights were appurtenant to the Diamond S Ranch properties in Humboldt County, Nevada.

The Court: Just a second—when you refer to the water rights on the Humboldt River, to what decree are you referring?

A. I believe the original decree signed by Judge Bartlett, later amended somewhat. [78]

The Court: Thank you.

Q. Mr. Sewell, were you on any ranch properties in Humboldt County, Nevada as of May, 1951?

A. I have been around Humboldt County quite a bit.

Q. And were you familiar with the prices of cow units and with the sale of ranches and value of ranches, based upon the grazing rights, etc., in the year 1951?      A. I think so.

Q. And from the investigation that you have made of the Diamond S Ranch properties, did you form an opinion as to the value of the properties in Humboldt County, Nevada?      A. Yes.

Q. And that was for 1951?      A. Yes sir.

Q. And what was that value?

A. I thought the ranch was worth three hundred twenty thousand dollars.

Mr. Smith: That's all.

#### Cross Examination

Q. (By Mr. Macomber): What date did you make this appraisalment, Mr. Sewell?

(Testimony of Charles Sewell.)

A. What date, did you say?

Q. Yes.

A. It was the last three days in October, 1956. It might have been the 29th, 30th and 31st, first day of November, that period.

Q. Had you actually gone over the Diamond S Ranch between 1939 [79] and 1956?

A. I had never gone over it, been by it but never over it.

Q. When you went by, you went by about fifty-five miles an hour?

A. That is about my speed, yes.

Q. When you sent over this ranch during the latter part of October, 1956, did you see a lot of new improvements to the ranch?

A. Yes, I did.

Q. You saw six or seven new wells?

A. I saw eight wells.

Q. Pardon me?

A. I think there were eight wells.

Q. And you saw new feed mill?

A. Yes sir.

Q. And you saw new corrals?

A. Yes sir.

Q. New fences?

A. I didn't see many new fences.

Q. You saw new pipe lines?

A. You mean the pumping plant?

Q. Yes. A. I saw a pumping plant.

Q. And pipe lines?

A. Didn't see any pipe lines. Are you talking

(Testimony of Charles Sewell.)

about the pipe lines, are you referring to the sprinkler to the lands?

Q. Yes. [80]           A. Yes, I saw them.

Q. And you saw new power lines?

A. Yes sir.

Q. Transformers bringing power to all these eight new wells?           A. Yes sir.

Q. And do you know when those improvements were made to the ranch?

A. I couldn't know for sure what years they were made.

Q. Is it your opinion now that this ranch, as of the time you looked at it, was worth three hundred twenty thousand dollars?           A. No sir.

Q. How much was it worth as of the time you looked at it?

A. My valuation I was putting on it was I thought what it was worth in 1951.

Q. You didn't know what the ranch looked like in 1951, did you?

A. Well, yes sir, generally.

Q. Was your recollection of what it looked like in 1951 based upon your recollection of what it looked like in 1939?

A. I think it looked better in 1939 really.

Q. You really didn't see that ranch between 1949 and 1956, did you?

A. Just as I was going along the road.

Q. How much of the ranch could you see going along the road?           A. Quite a lot of it.

(Testimony of Charles Sewell.)

The Court: How far did that ranch stretch on the road?

A. I would say it runs along the road for six or seven miles. [81]

Q. Do you know how many cattle were on it in 1951? A. No sir.

Q. Is your appraisal based in any part upon the number of animal units the ranch would carry in 1951?

A. Based on what I thought I could run there.

Q. What you thought you could run there?

A. Yes sir.

Q. In 1951? A. Yes sir.

Q. Was your appraisal based in any respect upon how many animal units were allocated to this ranch by the Department of the Interior?

A. Yes sir.

Q. And what was that? What did you allocate? What was your thinking along that line?

A. Well, I heard you stipulate this morning 3692 AUM's, which we found in the grazing office to be the exact figure. I was basing my appraisal on running 1600 head of cattle.

Q. You think you could put 1600 head of cattle on these ranches for how long a period of time?

A. That would figure out about two and one-third months.

Q. And then you would bring the 1600 head of cattle down and feed them on the base ranch?

A. I would feed them, pasture them, yes.

Q. And the base ranch would have to produce

(Testimony of Charles Sewell.)

enough feed to [82] feed these animals for nine and one-half months?      A. That is right.

Q. And you believe, from your inspection in 1938 and your driving by there between 1938 and 1956, and from your inspection in 1956, that this ranch in 1951 would have carried 1600 head?

A. Yes sir.

Q. What is the Diamond S Ranch worth at the time you examined it, so far as animal units were concerned; that is to say, would you say that ranch could be valued by placing a value upon the number of animal units the ranch could carry?

A. I don't believe I quite understand your question.

Q. Is it usual to take into consideration in appraising, that is, in buying or selling Nevada ranches, the animal carrying capacity?

A. Right.

Q. What value do you put upon a ranch, so far as that is concerned?

A. I arrive at my figure 1600 carrying capacity at two hundred dollars per animal.

Q. You arrived at your appraisal by multiplying 1600 head animal units carrying capacity——

A. That is right.

Q. ——by two hundred dollars, is that right?

A. That is right.

Q. Are you familiar with any sales of ranches recently in the [83] State of Nevada, say in this particular area?



(Testimony of Charles Sewell.)

A. I just sold the ranch at Riddle last fall, traded it for property.

Q. How much per animal unit was that sold for?  
A. At one hundred fifty dollars.

Q. Are you familiar with the McIntyre Ranch east of Elko?  
A. Yes sir.

Q. Do you know what that sold for?

A. No, I do not.

Q. You don't know about that sale?

A. I know it was sold; I don't know the price.

Q. Do you know if it was sold for one hundred fifty dollars per animal unit?

A. I don't know. It was divided up and sold in two or three different parcels.

Q. Do you know about the sale of the Horseshoe Ranch?  
A. In Elko?

Q. That is in the vicinity of Elko.

A. Eureka County.

Q. Do you know that was sold on the basis of one hundred thirty dollars per animal unit?

A. No sir.

Q. You don't know what it sold for?

A. No.

Q. Do you know about the sale of the Hill Ranch in Star Valley? [84]

A. I know about that.

Q. What was the date of the sale?

A. I believe in the spring of 1956.

Q. Do you know the selling price of that ranch per animal unit?  
A. No sir.

(Testimony of Charles Sewell.)

Q. Do you know about the sale of the Warm Springs Ranch in Clover Valley?

A. I know the ranch.

Q. Do you know the selling price of that per animal unit?           A. No.

Q. Do you know about the sale of the George Ralph Ranch in Clover Valley?           A. Yes.

Q. Do you know the selling price?

A. No.

Q. So you have not familiarized yourself with sales of other ranches in that vicinity, have you?

A. I am not in the real estate business.

Q. Do you know that the C.S. Ranch immediately adjoining the Diamond S Ranch is being sold by the Bullhead Cattle Company, do you know about that?           A. No sir.

Q. Do you know whether in 1951 the Diamond S Ranch ever would actually carry 1600 head of cattle throughout the year?           A. I think so. [85]

Q. Do you know whether there were in fact 1600 head of cattle there at that time?

A. I never counted them. I was never on the ranch to count them.

Q. Do you know whether it is customary to use those Taylor grazing rights and the leased land over the period of five months during the year instead of two and one-half months?

A. I think an operator might increase his numbers and shorten his term, or the other way around.

Q. I am asking for what is usual in Humboldt County. Do you know?

(Testimony of Charles Sewell.)

A. Usual, I don't know. Probably no two operators have the same operation.

Q. You don't think there is any usual period of time in which the——

A. No, sir.

Q. Do you know of any ranch in Humboldt County where they run their cattle two and one-half months over the entire Taylor grazing rights?

A. I think that the ranch I bought above the town of Winnemucca, I think they take their Taylor grazing in the winter time.

Q. For how long?

A. Two or three months.

Q. Do you know of any ranch in Elko County use their Taylor grazing rights for two and one-half months? [86]

A. Some ranches in Elko County don't even allow Taylor grazing at all.

Q. Isn't it a fact the ranches in Elko County, as a general rule, are considered superior to ranches of the same acreage in Humboldt County?

A. That depends on——

Mr. Smith: Objected to as irrelevant.

The Court: I don't think it is relevant, so far as the Court is concerned.

Mr. Macomber: I will withdraw the question.

The Court: I think you have demonstrated, counsel, that this witness is not, as he stated, a real estate operator. He is not here for putting on the value of sales.

Mr. Macomber: That's all.

(Testimony of Charles Sewell.)

Redirect Examination

Q. (By Mr. Smith): Mr. Sewell, in arriving at the price you did and for the year 1951, you base that upon what you thought you could operate the ranch, the way you could operate the ranch, is that correct?

A. I don't understand the first part of your question.

Q. In arriving at your value of three hundred twenty thousand dollars, you arrived at that value as to the operation of the ranch properties and what it would be worth to you if you were going to buy it and operate it?

A. I think that was a pretty common price, three hundred twenty [87] thousand dollars.

Q. In 1951? A. Yes.

Q. And of course decreased in 1951 because of the condition of the cattle industry?

A. That is right.

Q. But in arriving at the price of three hundred twenty thousand dollars, you felt the ranch, as you knew it, 1600—

Mr. Macomber: Objected to as leading and suggestive.

The Court: Objection overruled. This entire area is speculative, so far as this Court is concerned.

Mr. Smith: That is all.

Recross Examination

Q. (By Mr. Macomber): Mr. Sewell, if the

(Testimony of Charles Sewell.)

Diamond S Ranch Company actually used their Taylor grazing rights to pasture 738 animals for a period of five months and those 738 upon the best range, and fed for the rest of the year, would your answer be any different, and your appraisal?

A. No sir.

Mr. Macomber: That's all.

The Court: Mr. Sewell, based upon your experience in the livestock industry in Elko County and Idaho, based upon the fact that you were by this ranch in 1939 and again in 1956, [88] you have attempted to reconstruct a picture that will fit this ranch in 1951?

A. That's right, yes sir.

Q. And as counsel has said, this picture, then, was created on what you think you might have done had you been operating it in 1951?

A. Well, when I was there in 1938 or 1939 these people delivered the cattle and we cut the calves off and shipped them out to the Nelson Meat Company, so we were around there several days, getting these calves and I was around there several days, and as I recall, I bought the pasture and hay right from a woman, who owned the ranch at that particular time. I thought it was a pretty good ranch.

Q. You had an opportunity to examine the fields. Did they consist of irrigated pasture or did they consist of crops?

A. Most of it was wild native hay.

Q. Of course, the extent of that depends upon the——

(Testimony of Charles Sewell.)

A. Flow of the Humboldt River.

Q. Upon the river. That can vary from nothing to one hundred per cent?

A. That's right.

Q. The operating value of any property depends upon the operation and ability of the person in charge?

A. That's true, yes, very true. [89]

Q. You can make money on a spread and I couldn't.

A. Well, you could make it, I could make it too.

Q. Now in arriving at a value, based upon this two hundred dollar rule of thumb proposition, and we all realize the rules are the quick factors that we use in the livestock business, did you take into consideration the fact that certain of the AUMs were based on the leased property commensurability? A. Yes.

Q. And if those leases had been terminated, of course, some of the value would be gone?

A. That is right.

Q. In 1956, when you went upon the ranch last, could you tell whether or not the fields were devoted to irrigated pasture and wild hay or crops?

A. The Diamond S Ranch Company has done a lot of work there. They have some beautiful crops growing on there now. I saw them yesterday as I came along and I could tell all that had been put in pasture. To go back and say in 1951—

Q. What you say what was there in 1951, to me would be an impossibility, so that is one of the



(Testimony of Charles Sewell.)

points the Court had in mind. It would be rather a difficult problem for you to say in 1956 subtract all the changes and eliminate them from your mind, and operate solely on a 1951 picture, because you didn't see it in 1951. [90]

A. But it isn't as difficult as it might seem, because the land that is the new land in cultivation is growing alfalfa, parallel alongside the road. When I was there before the native hay that was there would have to take care of the stock I thought you could run there.

Q. Do you know how many cattle were actually run in 1951? A. No, I do not.

Q. Do you recall what the flow of the Humboldt was, as to decreed water, in that year, as to that ranch?

A. In 1951, lots of water in the Humboldt.

Q. Have you any recollection or knowledge as to what the ranch condition was in the area in which the grazing rights were exercised?

A. We didn't go out and actually tramp over the grazing lands.

Q. Contiguous to the ranch?

A. Just across the highway.

Q. It is a summer range?

A. Spring range I call it, better spring range.

The Court: I think that is all.

Mr. Smith: That's all.

## HARLEY M. McDOWELL

a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

## Direct Examination

Q. (By Mr. Greenfield): State your full name, please. [91]

A. Harley M. McDowell.

Q. Where do you reside, Mr. McDowell?

A. Boise, Idaho.

Q. What business are you in?

A. In the business of ranch management, appraisals and map making.

Q. Do you have a business name?

A. I am the owner and manager of the Idaho Land & Map Service.

Q. Would you rather briefly tell your educational background, Mr. McDowell?

A. I have a Bachelor of Science degree from Colorado State College of Agriculture and work toward a Master's Degree in ranch management, land economy and associated engineering subjects from the Utah State College of Agriculture.

Q. Did there come a time in your life when you became employed by the United States Department of the Interior, Bureau of Land Management?

A. Yes, I was employed first in Elko County, Nevada.

Q. When was that?

A. That was in 1938 and 1939.

Q. What was your position at that time?

A. I worked on ranch analysis classification, ranch analysis, land classification, checked the best

(Testimony of Harley M. McDowell.)

pasture commensurability, in those days called Taylor grazing rights.

Q. That would have been throughout Elko County? [92]           A. That is correct.

Q. Then following 1939 where were you employed?

A. By the Taylor Grazing Service in Idaho in approximately the same capacity, working on ranch and land appraisal, such as carrying capacity, ranch analysis, until 1946.

Q. Then from 1946 to 1950 what was your occupation?

A. I was Director of Classifications for the State of Idaho, had charge of all appraisals of all property in the State, as well as setting up land classifications, and employed some ninety to ninety-five persons under my direction at that time.

Q. Since 1950 you have been operating your own business, the Idaho Land and Map Service?

A. That is correct.

Q. Would you state a little more fully generally what services you perform, your company performs?

A. We act as consultants for some four hundred fifty ranch operators in western Wyoming, throughout the State of Idaho and northern Utah, all of Nevada and eastern Oregon and in that capacity we work on the Taylor grazing operations, ranch management plans. In addition to that we do appraisal work.

Q. Are you acquainted with the properties of

(Testimony of Harley M. McDowell.)

the Diamond S Ranch Company?      A. I am.

Q. When did you first see that property?

A. 1938 and 1939, but not to be very familiar with it. [93]

Q. You were on the property, however?

A. Just by the property, wasn't on it.

Q. Just by it?      A. Yes sir.

Q. Let us go back to the year 1951. During the year 1951 you were operating your Idaho Land and Map Service, and at that time were you familiar—did you become familiar—with real estate values, and in particular ranch property values, throughout southern Idaho and northern Nevada?

A. Yes, I did. We have appraised some three thousand parcels of land and I would like to refer to those two years to refresh my memory for dates as to what time I was in this area.

Q. Go ahead, but let me ask you this, did you have occasion to appraise an outfit known as the Bucknauer & Arnold Crescent Valley ranches in Eureka County?      A. I did.

Q. Do you know about when that was?

A. I can tell you exactly if I refer to this.

Q. Go right ahead.

A. I appraised that property in December, 1951.

Q. About how far away is that property from the property of the Diamond S Ranch Company, approximately?

A. I believe about fifty miles, between fifty and fifty-five.

Q. And at the time you appraised the Crescent

(Testimony of Harley M. McDowell.)

Valley ranches in 1951, did you make inquiries as to prices ranches of similar [94] character were selling for?

A. I did. The Bucknauer & Arnold outfit were contemplating making quite an extensive ranch development and going into the sales problem they had some six townships and Mr. Arnold was an old land agent for Miller and Lux Company in the early days and we spent considerable time making land classifications through Battle Mountain, Paradise Valley, Quinn River and McDermitt and towards Wadsworth, checked several ranches there.

Q. Now I will ask you, Mr. McDowell, if recently you have had occasion to make detailed examination of the properties of the Diamond S Ranch Company?      A. I have.

Q. When was that?

A. That was October and November, 1956. I spent some twelve days examining the ranch properties and records and all things I believed pertinent in establishing valuation.

Q. And did you come to an opinion as to the value of the Diamond S Ranch properties as of 1951?      A. I did.

Q. Based upon your experience, extensive experience, in appraising real ranch properties throughout this western area for many years, based upon your examination and study of the Diamond S Ranch properties in 1956, what is your opinion of the value, the fair market value, of these properties in 1951?



(Testimony of Harley M. McDowell.)

Mr. Halley: May I ask some questions on voir dire? [95]

The Court: You may.

### Voir Dire Examination

Q. (By Mr. Halley): Mr. McDowell, did you check sales of ranches made in Humboldt County, Nevada in 1951?

A. I have sales of ranches which I feel——

Q. Answer the question—did you check sales that were made in Humboldt County of ranches in 1951?

A. I did not.

Q. Did you check sales of any ranches that were contiguous to the Diamond S Ranch that were made in 1951?

A. I did not.

Q. Did you make examination of the Diamond S Ranch in 1951?

A. Not for appraisal purposes.

Q. I believe you said you first saw the ranch in 1938 or 1939 and you merely drove by it?

A. That is correct.

Q. You did not examine it to determine the extent of it or carrying capacity or condition it might be in?

A. Not until 1951.

Q. In 1951 did you examine the ranch to determine its condition?

A. No, the only examination I made in 1951 was in connection with the McCleary property and Bullhead.

Q. And you examined Bullhead?

A. I examined Bullhead at that time just to



(Testimony of Harley M. McDowell.)

obtain the general carrying capacity and general ranch conditions. [96]

Q. But Bullhead was not for sale in 1951?

A. No.

Q. Were any of the McCleary properties for sale in 1951?

A. No. He purchased the Reborse Ranch, but it was before that time.

Q. Prior to 1951? A. Yes.

Q. Was that over on the Little Humboldt?

A. That would be in Paradise Valley, which would be adjacent to this area.

Q. Paradise is on the Little Humboldt?

A. Well, that is correct.

Q. This ranch is on the Big Humboldt?

A. That is correct.

The Court: The Court will take judicial notice.

A. I might say, your Honor, I am familiar with the McCleary properties. I have studied those properties in detail for carrying capacity. I know how they compare with these properties.

Q. Do you know when this Diamond S Ranch was last sold?

A. I do not, but from the records I believe I could tell you. The record I have here, when it was formerly the Stall ranch and I understand the Diamond S Corporation since 1945, but I am not familiar with the history prior to that time.

Q. You are not familiar with the last sale of this particular ranch? [97]

A. I am not. I might explain here in my opin-

(Testimony of Harley M. McDowell.)

ion individual characteristics of the ranch, carrying capacities, improvements and location varies the value, that is what we are interested in selling, that is what it is worth.

Mr. Halley: I think the Court might tell you the comparative sales are considered in law the best evidence.

Mr. Greenfield: Just a moment—it seems to me this has developed into general cross-examination. This is voir dire, there should be some limitation.

The Court: Have you concluded your voir dire?

Mr. Halley: No, your Honor.

Q. You say you took into consideration the condition of the property? A. I did.

Q. And also its carrying capacity?

A. I did.

Q. In 1951 you did not know the condition of the Diamond S Ranch?

A. I have an opinion as to the condition.

Q. You didn't know, though, what the condition was?

A. I can only tell you from the inspection I made at that time, which was general. I do not have specific knowledge of all the conditions.

Q. I understand, Mr. McDowell, that you did not make an examination [98] of this ranch in 1951? A. I did not.

Q. And prior to that time you saw it in 1938 or 1939, but you did not examine it, merely went by? A. That is correct.

Q. So you do not know its condition in 1951,

(Testimony of Harley M. McDowell.)

you don't have actual knowledge of its condition in 1951?

A. I believe in that respect you don't have to examine a ranch for appraisal purposes to know its general conditions. You can drive by or through a ranch, you can tell the general condition very easily.

Q. Then I understand you are going to base your opinion, in answering the question on the condition of the ranch in 1951 and the condition as you now describe it, not knowing it actually, but just driving by it, is that right?      A. No, sir.

Q. You are going to take into consideration the condition of the ranch in 1951?

A. I am to my best knowledge, yes, and to records I have available.

Mr. Halley: We object to the offer on the grounds the witness is not qualified to answer, by his own admission here that he bases his appraisal in part upon the condition of the property, and certainly this witness has demonstrated he has no knowledge of the condition of this ranch other than he saw [99] passing by on the highway.

The Court: Well, counsel, expert witnesses are admittedly favored in law. Perhaps that is as it should be. I don't know as there is an objection. The Court at this time will give the testimony such weight as it feels proper.

Examination Continued

Q. (By Mr. Greenfield): Mr. McDowell, will

(Testimony of Harley M. McDowell.)

you then state what, in your opinion, was the fair market value of the Diamond S Ranch property in 1951?      A. In my opinion——

The Court: May the Court make a comment? I think this witness has demonstrated he doesn't know what the fair market value is. I think that is obvious. That is what you are trying to bring out. He has said he is not arriving at his opinion directed toward the fair market value, but as a value which he places upon it upon the basis of his own peculiar technical knowledge.

Mr. Greenfield: If the Court please, I would like to inquire a little more on this.

The Court: You may.

Q. Mr. McDowell, have you done any appraisal work for condemnation [100] purposes?

A. Yes, I have.

Q. What is your understanding of the meaning of the term fair market value?

A. It is the price the property would sell for to a willing buyer who was not forced to buy, by a seller who was not forced to sell. Now I would like to make one correction in my testimony here. I stated in court I did not base my testimony entirely on comparative sales, but I made a misstatement.

The Court: And perhaps the Court is off on the wrong track. This witness said he was not familiar with ranch sales.

A. Your Honor, as I tried to explain here, I

(Testimony of Harley M. McDowell.)

do have comparative sales of ranches, but not in Humboldt County.

Q. Let me come to that. As I understand it, you, in 1951, while appraising the Bucknauer & Arnold Crescent Valley ranches, had occasion to, and did, discover the selling price of comparative ranch property in northern Nevada and southern Idaho? A. I did, yes.

Q. Where were these properties located with respect to Humboldt County? Were they remote or were they reasonably close?

A. They would be within a radius of—I think the ranching conditions would be very similar and comparable.

Q. That is what I want to know.

Mr. Halley: I move to strike the answer as not being [101] responsive to the question.

Mr. Greenfield: I think that is a subject of general cross-examination when Mr. Halley comes to it.

The Court: It is responsive in a limited manner, but you might have further questions. Have the witness translate that into miles.

Q. How far away were these comparable properties you are talking about, Mr. McDowell?

A. Within a radius of eighty-five to ninety miles.

Q. Now I would like again to ask you one other question. I think you said—and perhaps you confused the Court—that when you stated that you didn't consider comparable sales being the sole basis upon which to arrive at your basis, you said



(Testimony of Harley M. McDowell.)

that you took into account the peculiar and personal characteristics of the property you are appraising, so when you get all through taking into account the personal characteristics of the property and the comparable sales and all the other elements you testified to, do you come up, and in this instance did you come up, with an opinion as to the fair market value?      A. I did.

Q. Now what is your opinion as to the fair market value of this property in 1951?

Mr. Halley: I would just like to ask a further question on voir dire before he answers, in line with what counsel has developed here.

The Court: Well, I think it is covered, but go ahead. [102]

#### Voir Dire Examination

Q. (By Mr. Halley): Mr. McDowell, when you say you are familiar with comparable properties as they existed in 1951, they were within a radius of eighty-five to ninety miles of this property, is that true?      A. That is right.

Q. And those properties were in Elko County?

A. No, a part in Humboldt, the Quinn River and McDermitt area, that vicinity.

Q. Isn't it a fact Elko properties, ranches, are considered more ideal properties than any properties on the river?

A. I think some of your Elko ranches would sell for more. Some probably sold for comparable—again it is the individual ranch. You can't say one area is superior to another.



(Testimony of Harley M. McDowell.)

Q. You also say you take into consideration the personal characteristics of the property, is that true?      A. Yes.

Q. And you take into consideration comparable sales which are indicative of them?

A. Correct.

Q. Now the comparable sales you have in mind are the ones in Elko County?

A. No, not Elko County alone. I still have Humboldt, actually in Malheur County, Oregon, one would be in Humboldt County, right on the Oregon line.

Q. How far from this ranch? [103]

A. At McDermitt.

Q. How far from this ranch?

A. Within eighty-five miles.

Q. At the top of the creek too, wasn't it?

A. No, not entirely at the top.

Q. More or less though?

A. More or less.

Q. Now you are familiar with the personal characteristics of those properties too?

A. I am familiar with the carrying capacity of the properties and factors that go to make up values.

Q. Still in 1951 you did not have actual knowledge of the personal characteristics of the Diamond S Ranch?

A. I have personal knowledge of the basic factors to make up values.

(Testimony of Harley M. McDowell.)

Q. But you did not inspect the ranch for personal characteristics in 1951, is that right?

A. I examined it several times. I did not for any value.

The Court: How long were you on the ranch?

A. I imagine thirty minutes. We drove from the highway down the line, direct across the river and turned around and had a chance to see the buildings and property on the western side, turned around and drove back up to the town of Golconda, then drove down the full length of the ranch along the highway, which gives you a good inspection of the whole property. [104]

The Court: That is the way I inspect mining property, in my amateur way.

A. Had I inspected for appraisal, I would have taken several days.

The Court: I think we will take our afternoon recess. We will be in recess until 3:15.

(Recess taken at 3:00 o'clock.)

3:15 P.M.

The Court: Any further questions, Mr. Halley?

Mr. Halley: We renew our objection.

The Court: That objection was to this witness testifying to the fair market value?

Mr. Halley: Yes, your Honor, giving his opinion as to the fair market value.

The Court: Objection overruled.

Direct Examination—(Resumed)

Q. (By Mr. Greenfield): Now, Mr. McDowell,

(Testimony of Harley M. McDowell.)

in preparing your appraisal of this ranch, did you prepare personally a map of the properties?

A. I did.

Q. Mr. McDowell, showing you plaintiffs' Exhibit No. 2-P, I will ask you if that is the map which you prepared? A. It is.

Mr. Greenfield: We offer the map in evidence, your Honor.

Mr. Halley: May we see it, your Honor? May we ask a [105] few questions?

The Court: Yes, you may.

#### Examination

Q. (By Mr. Halley): Mr. McDowell, when was this map prepared? A. December, 1956.

Q. That was after the examination you made in October and November, 1956? A. Yes, sir.

Q. And does this depict the conditions as you found them at that time? A. Yes, sir.

Q. It does not purport to depict the condition that existed at the ranch in 1951, is that true?

A. It does not. I have made allowances on my appraisal to take that into consideration.

Q. However, the ranch is as it existed in 1956 rather than 1951? A. That is correct.

Mr. Halley: We object to the offer, your Honor, as entirely too remote and would not tend to prove any of the issues in this case. Entirely incompetent.

The Court: It is evidently an agricultural map?

A. Yes, sir.

(Testimony of Harley M. McDowell.)

Mr. Halley: There is evidence here there have been tremendous improvements on that property since 1951, as shown by Mr. Sewell's testimony.

The Court: Does this map show the principal area of the holdings involved here?

A. It does.

Mr. Greenfield: If the Court please, I suggest the map is of value to the Court for the purposes of illustration, if nothing else, with the understanding that it does not reflect changes since 1951, of whatever value the Court finds it to be.

The Court: With that statement, the map is admitted in evidence, for the limited purpose of illustration only, having in mind that it does not attempt to show the agricultural status of the holdings in 1951. Do you have any objection to that?

Mr. Halley: No, your Honor, for illustrative purposes only.

Examination—(Resumed)

Q. (By Mr. Greenfield): Mr. McDowell, in arriving at your appraisal of the property, as you have testified, did you prepare a written breakdown, typewritten breakdown, in detail of your valuation of the property, parcel by parcel?

A. I did.

Q. Showing you what has been marked for identification as plaintiffs' Exhibit 3-P, will you state whether or not that is a true copy of your detailed breakdown appraisal?      A. That is. [107]

Mr. Greenfield: We offer this in evidence, your Honor, as plaintiffs' Exhibit 3-P.

(Testimony of Harley M. McDowell.)

Mr. Halley: May we see it. If the Court please, we object to the offer, first, on the ground attached to the appraisal are many exhibits, which certainly are not evidence—letters from, as I understand, the District Grazier, for instance, letters directed to the District Grazier by Robert M. Leonard, whoever he may be, many items in there that are purely hearsay statements and probably self-serving. We haven't had time to examine them. The appraisal itself is self-serving.

Mr. Greenfield: When the Court has completed its examination of the exhibit, I would appreciate an opportunity to comment.

The Court: In relation to your objection that it is hearsay, the Court points out all those matters will be considered by the Court in weighing the offer. Perhaps the exhibit indicates a considerable portion of hearsay. It may be more valuable to the defendant than to the plaintiff. Do you wish to make some comment, counsel?

Mr. Greenfield: I think not, your Honor.

The Court: Perhaps the Court shouldn't talk so much. The Court is of the opinion that the appraisal, so far as it goes, being represented by [108] plaintiffs' Exhibit 3-P, is admissible, in support of the opinion given as to the fair market value, and certainly is material to the extent that it gives the Court some idea as to how the witness went about, the mechanical process of appraising. Objection overruled. The offer is admitted in evidence as plaintiffs' Exhibit 3-P.



(Testimony of Harley M. McDowell.)

Mr. Greenfield: Defendants may cross-examine.

### Cross Examination

Q. (By Mr. Halley): Mr. McDowell, in your opinion is there anything peculiar about the Diamond S Ranch that is any different from any other ranch in that area?

A. I feel it is. It is quite a well balanced property and it is different from some other ranches in that it has a higher percentage of private land and the major portion of pasture is deeded lands being dependent upon the Taylor grazing and outside range. It has an excellent location with reference to the highway and rail head and has a high potential for development of underground water. It has a well balanced set of improvements. It has exceptional possibilities to build a feeding operation and a ranch livestock operation. It has capabilities in soil and irrigation facilities that would make a potential diversified crop farm.

Q. Do you know whether this property was ever adapted to a [109] feeding outfit?

A. I know from the facilities in place they have used it for that purpose.

Q. Do you know if that was the case in 1951 and prior thereto?      A. I do not.

Q. Do you know if underground water were developed in 1951 or prior thereto?

A. To my best knowledge there were two wells at that time.

Q. In 1951?      A. Yes, sir.



(Testimony of Harley M. McDowell.)

Q. Now there are how many?

A. I believe eight or nine. I can tell you exactly by examining the report.

Q. The range depends a lot upon leased land, does it not?

A. The actual federal range privileges that are dependent upon leased lands are only eighty-four AUMs.

Q. Isn't it a fact that over thirty per cent of the AUMs are public domain?

A. Yes, but 1536 of those AUMs are dependent upon the ranch proper, not leased lands.

Q. In other words, the ranch is the base property for those 1530? A. 1536.

Q. How many AUMs on the leased land?

A. Eighty-four on the federal range. [110]

Q. I mean lands leased from the railroad?

A. Carrying capacity on the railroad lands?

Q. Yes.

A. On the Diamond S deeded lands 235 AUMs, that is upon the ranch land, then on the leased land would be 1837.

Q. That is on lands owned by the Southern Pacific Railroad? A. That is correct.

Q. And also property owned by Millem?

A. Yes.

Q. And they are subject to lease?

A. That is correct.

Q. Did you make inquiry concerning the leases?

A. I did. I made a thorough investigation of them.

(Testimony of Harley M. McDowell.)

Q. Did you check with Millem and determine whether the lease was for more than a year?

A. No, but I saw a copy of the lease filed in the grazing office at Winnemucca.

Q. Only for a year? A. That is true.

Q. Isn't that true of all the Southern Pacific land? A. That is correct.

Q. So the use of those lands from year to year is dependent entirely upon renewing those leases, is that not true?

A. I believe that is true.

Q. In your examination in the Bureau of Land Management office [111] in Winnemucca, it disclosed, did it not, Mr. McDowell, that since the year 1950 the use of the federal range runs from April 1st to August 31st? A. Correct.

Q. That is for one thousand?

A. Thirty per cent.

Q. Fifteen hundred seven AUMs?

A. Correct.

Q. For five months, 4-1 to 8-31?

A. That is right. I might state if the Diamond S had applied for the full 3692 it would have been granted. They didn't, they used their range.

Q. Whereas in 1951 they had 1507 AUMs on federal ranges?

A. They were utilizing that many but still had dependence for use on the federal range, especially in good weather, for 1771.

Q. I show you defendants' Exhibit F, admitted in evidence here by stipulation, dated July 7, 1950,

(Testimony of Harley M. McDowell.)

signed by Mr.—. He was head of the office, was he not?      A. Yes.

Q. And he said that the estimated carrying capacity of the federal range was in one instance 1536 AUMs and in another 84 AUMs?

A. That is right.

Q. And the carrying capacity of the leased lands was 235 AUMs in one case and 1837 in the other?

A. Yes, that is what I am testifying to. [112]

Q. In making your appraisal, were you accompanied by Mr. Sewell?      A. Part of the time.

Q. And Mr. Utter?      A. Part of the time.

Q. Did you three, in making the inspection, discuss the several properties?

A. We discussed the properties but we did not discuss valuations.

Q. You discussed carrying capacity?

A. We discussed carrying capacity.

Q. You discussed the condition of the properties?

A. Yes, discussed the condition and management.

Q. Did you discuss the condition as you then found it?

A. Discussed condition as of that time and prior time.

Q. Did you discuss the condition as it existed in 1951?

A. I don't recall, most likely did.

Q. The fact of the matter is, Mr. McDowell, you didn't know the condition in 1951?

(Testimony of Harley M. McDowell.)

A. I didn't know, only the testimony I heard.

Q. But you, yourself, didn't actually know the condition in 1951?

A. I have an opinion of the condition in 1951.

Q. You have an opinion, but you don't have the actual knowledge?

A. The knowledge was satisfactory to me.

Q. Satisfactory to you? A. Yes, sir. [113]

Q. Did you all agree on the carrying capacity?

A. I don't recall that we did or didn't. I would rather stand on the facts that are in my report. That is my statement and as to what they thought, I don't have a remembrance.

Q. You were in court when Mr. Sewell testified?

A. Yes.

Q. Did you agree with the carrying capacity?

A. I feel on an actual breakdown basis in 1951 the property would carry 1700 head.

Q. Do you know, as a fact, how many cattle were on the property in 1951? A. I do not.

Q. Now if you knew that there were six hundred head of cattle on the property in 1951, that they were on the range for five months and then before the year was out had to be shipped out because feed was all gone, would that change your opinion? A. It would not.

Q. It wouldn't change your opinion?

A. No, sir.

Q. I think on direct examination you gave your understanding of what market value was, a situation where a willing buyer, not required to buy,

(Testimony of Harley M. McDowell.)

would buy from a willing seller, not required to sell, is that correct?      A. Correct.

Q. Is there any other information to add affecting all the [114] conditions and circumstances concerning the property?

A. As I recall, there may be some statement—I have always just used the definition I defined to you.

Q. You have never taken into consideration the fact that each of them would know all the circumstances and conditions concerning the property involved?

A. I have always assumed that if a person is willing to buy and not forced to buy and willing to sell and not forced to sell, they know those conditions before they reach that situation.

Q. Do you take that into consideration?

A. In that respect.

Q. When were you engaged by the plaintiffs in this case to make this appraisal?

A. Actually in August of 1956.

Q. You have certain fees that you charge, do you not?      A. I expect to get paid.

Q. By the plaintiff?      A. Yes.

Q. To what extent, Mr. McDowell, has this ranch been improved since 1951 through October, 1956, when you made your inspection?

Q. Would you please state the dates again?

Q. 1951 to the time of your inspection in October and November of '56?

A. In my opinion, the feed grinding and feed



(Testimony of Harley M. McDowell.)

yards operation has been little improved upon. There has been investment there. [115] One major item on my report, 930 acres of limited irrigation agricultural land I valued this at thirty dollars an acre. Actually today that land is probably worth one hundred fifty or even more, because of the wells, etc. that have been placed upon it, but I only valued it at thirty dollars at that time, due to limited irrigation facilities and potential water on the land would raise the valuation of the property today. I don't think it would raise it as much as Mr. Wahyou said, to a million dollars, but I feel it would raise it another one hundred fifty thousand dollars. I try to estimate where I know the developments were made. I have made my valuation conservative for that reason.

Q. In other words, you have attempted to take yourself back to 1951? A. Yes, sir.

Q. On what you could determine were new improvements? A. Yes, sir.

Q. That is merely a guess, is it not?

A. Appraisal isn't an exact science. I wouldn't like to say it is a guess, but it is my best estimate. I even checked the old water record and beneficial use and they show grain, alfalfa, a lot of cultivation and acreage in cultivation at that time and shows the potentiality has always been there many years before 1951, and if it wasn't carried through, I can't say that is the fault of the ranch, would depreciate the value [116] of the ranch. Management doesn't entirely obliterate valuation.



(Testimony of Harley M. McDowell.)

Q. You say you are not familiar with the price it sold for at the last sale?      A. I am not.

Q. If you know that this ranch sold for one hundred thousand dollars in 1945, would that change your opinion?

A. No, I believe not. I know what ranches of this type were selling for at the time and to use the rule of thumb we have here, the valuation I placed is actually below the average, so I believe the valuation is a fair estimate.

Q. That is a going concern value?

A. That is the value I think a willing buyer would buy and a willing seller sell.

Q. And in pretty good condition, ditches kept up, fences kept up, things of that nature?

A. For what I think would be a normal condition for the ranch to carry livestock.

Q. So in arriving at your valuation in 1951, you assume this ranch was in normal condition at that time?

A. As I mentioned before, I have in several instances depreciated the value because I do not think it was in as high a state of cultivation as it is at this time and I believe the valuations I put on there I placed from all the records I have gone over and grazing and water records, all the old water photographs, which show exactly what was there in 1951. The [117] photographs speak very clearly. To my best estimate, that opinion of valuation, this report, portrays my presumption.

(Testimony of Harley M. McDowell.)

Q. Are you acquainted with Mr. Wisecarver's appraisal?

A. Yes, I had an opportunity to see that just recently.

Q. Did you examine that before you came here?

A. No, I didn't. My report, I believe, is last December and I did not see this until last week. I would say it is more liberal than my report. I did not allow as high a valuation as he did.

Q. You think he was too liberal?

A. Well, I don't know as he is. Probably he is correct.

Q. You say it can't be an exact science?

A. No, he is higher than I am and Mr. Wahyou is higher than he is.

Mr. Halley: That is all, your Honor.

Mr. Greenfield: No further questions.

The Court: The fact that in 1956 there were twenty acres of new cultivated land, would that, standing alone, make it any more valuable, except for certain mechanical factors? There are innumerable factors that are pretty nebulous in character that go into any of these appraisals, either made by you as an expert or possibly a lay person.

A. I consider this ranch, having been improved more recently, [118] more agriculture, it might bring in less than in 1951 as a strict livestock ranch. I have seen more livestock outfits go broke by converting.

The Court: Well, that has been the Court's misfortune.

(Witness excused.)

JACK UTTER

a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Greenfield): Will you state your full name, Mr. Utter? A. Jack Utter.

Q. Where do you reside? A. Reno.

Q. How long have you lived in Reno?

A. Two years. It will be two years in September.

Q. What business are you in?

A. Real estate business.

Q. Was there a time, before you came to live in Reno, that you lived in Winnemucca, Humboldt County?

A. I lived in Paradise Valley, Humboldt County since July, 1947.

Q. From 1947 until when?

A. Two years in September.

Q. Until 1955? A. That is right.

Q. While you were residing in Paradise Valley in Humboldt [119] County, what was your occupation? A. I was a rancher.

Q. Are you acquainted, have you been acquainted over the years, with the properties of the Diamond S Ranch Company? A. Yes, sir.

Q. When did you first become acquainted with those properties? A. In 1950.

Q. How far are they from your place?

A. About twenty miles.

Q. Now in 1951 did you dispose of your prop-

(Testimony of Jack Utter.)

erty in Paradise Valley?           A. Yes, I did.

Q. At the time you sold, did you have occasion to become acquainted with the selling price, market value, of properties in that area?

A. Yes, I did.

Q. Now directing your attention to November of 1956, in the company of Harley McDowell and Charles Sewell, did you go upon the Diamond S Ranch Company properties and make a detailed investigation of the properties?           A. Yes, I did.

Q. Did you arrive at an appraisal of the fair market value of the property as of 1951?

A. Yes, I did.

Q. Mr. Utter, based upon your experience as a real estate man, [120] your experience as a rancher, living twenty miles from the Diamond S properties in 1951, based upon your knowledge of ranch property values in 1951 in the area, will you state what, in your opinion, was the fair market value of the Diamond S Ranch Company properties in 1951?

A. In my appraisal I stated I thought it was worth three hundred and fifty thousand dollars.

Q. In the process of arriving at your appraisal of these properties, Mr. Utter, did you prepare a typewritten detailed breakdown analysis of the properties?           A. Yes, I did.

Q. Showing you plaintiffs' Exhibit for identification No. 4-P, I will ask you if that is your detailed appraisal breakdown?           A. Yes.

(Testimony of Jack Utter.)

Mr. Greenfield: We offer plaintiffs' Exhibit 4-P for identification in evidence.

The Court: The offer is received in evidence and marked plaintiffs' Exhibit 4-P.

Mr. Greenfield: You may cross-examine.

### Cross Examination

Q. (By Mr. Macomber): Mr. Utter, were you on the Diamond S Ranch in 1950?

A. Yes, I was on the ranch in 1950.

Q. Do you recall much about it?

Q. A. No. I went there with Mr. Fulwider, and as far as going out on the ranch, I didn't.

Q. There were no cattle that you saw on the ranch in 1950, were there?

A. I don't recall. I don't recall if there were any cattle there at that time or not.

Q. In 1951 were you on the Diamond S Ranch?

A. Yes, I was.

Q. Do you recall cattle on the ranch at that time? A. Yes, I do.

Q. Do you know about how many head were there? A. No, I don't.

Q. If there were approximately six hundred head of cattle on that ranch in 1951 and they consumed all the feed on the ranch for a period of five months, would your appraisal be any different?

A. I would say if six hundred head of cattle ate all the feed in five months, it was poor management on the ranch.

Q. Would your appraisal be any different?

(Testimony of Jack Utter.)

A. No, it wouldn't.

Q. What did you sell your ranch for in 1951?

A. You mean in dollars and cents?

Q. Yes.

A. One hundred forty thousand dollars.

Q. How much of that was attributable to real property and improvements and how much to other things?

A. It was broken down ninety thousand dollars to real property. [122]

Q. Plus the improvements?

A. Plus the improvements.

Q. What was the carrying capacity of your ranch? A. Three hundred eighteen head.

Q. What rights did you have, so far as Taylor grazing range?

A. Three hundred fifty head right.

Q. For how many months?

A. Two and one-half months.

Q. When you made the appraisal of the Diamond S Ranch last fall, you discovered that they had rights for a five-month period?

A. That's right.

Q. And they had a total of 3692 AUMs altogether? A. That's right.

Q. Of which 1771 AUMs were attributable to federal range, 1921 AUMs to private lands, including the Southern Pacific lands? A. Yes.

Q. And so that if you carried cattle on there for the five month period, they were licensed to carry 738 head?



(Testimony of Jack Utter.)

A. I do not believe, in my own personal opinion, the range that goes with this Diamond S Ranch is worth very much. I do not believe they could operate that many cattle on the range itself. I think they have a right out there that they can turn a few cattle out while their water is on the meadows or different places that is a low range and it dries up awfully [123] early.

Q. You take a dim view of the federal range and leased land?

A. Yes, I do not believe it is worth very much to the ranch.

Q. So that most of the value of the ranch is what cattle they can feed on the ranch itself?

A. That is right.

Q. Did you notice in 1951 the ditches all broken down?

A. No, but I did notice they had a beautiful crop of alfalfa.

Q. In 1951 how many acres of alfalfa did they have?

A. I couldn't say. I don't know, but I would say one of the best crops of alfalfa in that part of Nevada.

Q. You don't know how many acres they had?

A. No, I do not.

Q. Did you notice that the alfalfa was irrigated from the ditch coming from the dam?

A. I think it was irrigated, yes.

Q. And also from waters coming down from Cold Creek?

(Testimony of Jack Utter.)

A. Yes, had an awfully good year that year.

Q. There was good water here?

A. Yes, wonderful.

Q. Did you also notice in 1951 that the balance of the ranch, outside of the alfalfa, they couldn't irrigate it because of the condition of the ditches?

A. No, I did not.

Q. Would you say that was not a fact, or you just didn't [124] notice?

A. I just didn't notice. I wasn't there for that purpose; I couldn't say.

Q. Were you in court this morning when Mr. Nutting was testifying about the condition of the ranch?

A. I was not.

Q. Did you have any federal grazing rights in connection with the ranch that you owned and sold?

A. Yes, I had Taylor grazing rights.

Q. And was it your experience on your own ranch that those Taylor grazing rights were not worth very much?

A. My rights were very good.

Q. They were very good?

A. Yes.

Q. How many AUMs did you have altogether, including federal land and any other land that you leased?

A. I just had the federal land.

Q. You didn't lease any?

A. No. I ranged in common with several other ranchers.

Q. How many AUMs did you have?

A. Right off-hand I don't remember.

(Testimony of Jack Utter.)

Q. Well, three hundred fifty for two and one-half, do you think?

A. That is what it would be.

Q. That would be 875 AUMs?

A. Something like that, yes. I sold that ranch in 1951 and bought another at the same time I sold that one, a permit of [125] 378 and I paid one hundred forty thousand dollars for that, including the cattle, value of fifty thousand dollars.

Q. In your appraisal you value the Taylor grazing rights on federal land at eight dollars an AUM?

A. That is right.

Q. How did you arrive at that?

A. Well, the way I arrived at it, your value of the land from three dollars on the desert to fifteen to twenty dollars. I think perhaps that this Taylor grazing land connected with the Diamond S Ranch in certain years is worth that to the ranch. Every year they have a good year, they can turn out and utilize that feed. I believe for five months that is cheap for grazing land.

Q. That is for 'five-months' period?

A. Yes.

Q. Did you base your appraisalment on so much per animal unit carrying capacity?

A. Yes, I have.

Q. What do you figure?

A. I figured about fifteen hundred head and I figured it looked to me it went more to a feeder set-up than a cow and cattle operation.

(Testimony of Jack Utter.)

Q. So you figured fifteen hundred head at two hundred dollars a head?

A. I figured a little higher than that and Mr. McDowell figured [126] lower, but I don't think in my appraisal I figured fifteen hundred head at the most.

Q. And how much a head did you figure?

A. About two hundred twenty to two hundred twenty-five dollars.

Q. Do you know whether this ranch actually did in 1951 carry fifteen head?

A. I can't say.

Q. Do you know whether it could have carried it in the condition it was in, that is, fifteen head all year around?

A. I couldn't say.

Q. You have made your appraisal on the basis that you thought you could make it run fifteen hundred head, is that about it?

A. That is what I thought.

Q. Have you ever run fifteen hundred head of cattle?

A. Yes, I have.

Q. On what ranch?

A. I had three ranches.

Q. Do you have them now?

A. No, I haven't. I finished up last month.

Q. And if you should learn that this ranch would not carry fifteen hundred head, it would make no difference in your appraisal?

A. Yes, it would.

Q. If it carried only six hundred head for a period of five months in 1951 and all the feed was

(Testimony of Jack Utter.)

consumed, would that make [127] a difference to you in your appraisal?

A. I believe there were more cattle on there than six hundred in 1951.

Q. Do you know how many head there were?

A. No, I don't but I think there were a lot of cattle shipped in there. I can't recall whether '50 or '51.

Q. But you don't know how many?

A. I don't know how many. That ranch, what I have seen of it, should carry fifteen head of cattle easy.

Q. Do you know of any year, in 1951 or any time prior to 1951, when this ranch did carry 15—head all year around?

A. Well, I couldn't say how many; I can't tell you I have seen it carry fifteen hundred head.

Q. Has the price of ranches gone up or down since 1951, based on the AUMs?

A. I find that today that real estate values have not changed very much, although the cattle market is down to what it was in 1951. It seems like these real estate values are holding up.

Q. So they are about the same today as in 1951?

A. I would say so.

Q. Are you familiar with sales that have been made in the vicinity of the Diamond S Ranch in the past few years?

A. No, I am not. [128]

Q. Are you familiar with the sale of the Baldwin Ranch, the Horseshoe Ranch?

A. I know where it is.

(Testimony of Jack Utter.)

Q. Do you know that that was based on a selling price of one hundred thirty dollars an animal unit?

Mr. Greenfield: If the Court please, I think it is improper for counsel to persist in asking questions based on facts not in evidence. I have no objection to having him ask how much the ranch sold for, if he knows. I think it is irrelevant and immaterial, not based on the evidence.

The Court: Of course, the examination can't be on facts not in the record, but it serves its purpose to ascertain from this man to testify as an expert whether or not he knows the facts of sales.

Mr. Greenfield: I have no objection at all to having him ask if he knows what the facts were about sales of various properties, but I do feel he should not continue to put it as though it were in evidence. No objection to having him ask how much the ranch sold for, if he knows.

Mr. Macomber: That is all I am asking.

The Court: I think that is admissible.

A. I don't know.

Q. Do you have the CS Ranch, Bullhead Ranch, adjoining the Diamond S Ranch, listed with you for sale now? [129] A. Yes, I do.

Q. What are they asking for that ranch, what is the asking price?

A. Five hundred seventy-five thousand dollars.

Q. What is the carrying capacity of that ranch?

A. Three thousand head.

Q. Isn't it three thousand five hundred?



(Testimony of Jack Utter.)

A. I think, as close as I can check out the Taylor Grazing Act permits, it is maybe a little over three thousand.

Q. How much of this price is attributable to something other than the ranch and its improvements? A. That again I can't say.

Q. You don't have that with you?

A. I do not.

Q. Isn't it a fact that the asking price of the CS Ranch is approximately one hundred thirty-five dollars per animal unit for the ranch itself?

A. I can't recall, but I believe it is a little higher than that. I think we figured that out with Mr. Wallace approximately one hundred sixty-five dollars.

Q. That is your recollection right now?

A. I believe somewhere in there, one hundred sixty-five we figured. I don't recall.

Q. Have you sold some ranches in Humboldt County recently, the last few years? [130]

A. Yes, I have.

Q. Name one. A. The Lye Ranch.

Q. Was that sold on the basis of so much per animal unit?

A. It was not. The whole ranch at a price.

Q. Did you figure the selling price of that based on animal units so far as the ranch itself?

A. I bought it and sold it.

Q. Did it have cattle on it? A. Yes, it did.

Q. Did you sell it with the cattle?

(Testimony of Jack Utter.)

A. Yes, bought it with cattle and sold it with cattle.

Q. When you sold it, did you break it down?

A. No, I did not.

Q. Not at all?           A. No.

Q. Are you familiar with the sale of the McIntyre Ranch east of Elko?           A. I am not.

Q. Were you familiar with the sale of the Hill Ranch in Star Valley?           A. No.

Q. Were you familiar with the sale of the Warm Springs Ranch in Clover Valley?

A. No, I am not. [131]

Q. Is it your experience that Elko County ranches are generally worth more than Humboldt County ranches?

A. Well, I would say no. I had a ranch in Humboldt County. I believe the ranches in Humboldt County are as good as in Elko County.

Q. Based on this animal unit rule of thumb, what is your opinion as to what the value of the ranch is at the present time?

A. I don't believe you can value and compare one ranch with another—all the facts that enter into it, location and range, what type of range it has and how many cattle it will run along with the animal unit, and I don't see how you can compare one ranch with another.

Q. Is there anything unusual about the Diamond S Ranch that would make it worth more money than any other ranch?

A. It has an ideal location. Has a good water

(Testimony of Jack Utter.)

right; it is close to the highway, close to the railroad. I believe it is ideally located for a ranch.

Q. Is there anything else about it that is special, different from any cattle ranch?

A. I would say not.

Q. The circumstances you have just stated could be observed by any one who wanted to buy the ranch? A. I think so.

Q. You based your appraisalment in part by taking the land and fixing values per acre on land that has the condition this has, [132] is that right?

A. That's right.

Q. And you have taken the irrigated crop land, put a value of one hundred fifty dollars per acre upon it? A. That's right.

Q. And estimated the native hay pasture meadows at one hundred dollars an acres? Do you think those values are reasonable values in 1951 for this ranch?

A. I think so. I do not think there is a rancher in the northern part of the country that would pay one hundred fifty dollars for alfalfa land.

Q. Do you know there was seven hundred sixty-seven acres of irrigated crop land planted to corn in 1951? A. No, I do not.

Q. So if there were not that many acres, your appraisal is based then upon what you thought it could be developed into?

A. Mr. Sewell and Mr. McDowell and myself went over the water right. They had a water right at one time there were seven hundred sixty-

(Testimony of Jack Utter.)

seven acres of land under cultivation and I believe it could have been at that time. Whether it was or not, I do not know.

Q. So I assume your appraisal is based upon your appraisal what they could have done?

A. That is right.

Q. Or what you could have done with the ranch?

A. I will say yes.

Mr. Macomber: That is all.

Mr. Greenfield: That is all.

The Court: You may be excused, sir.

Mr. Greenfield: If the Court please, there are several depositions that we would like to offer.

The Court: What are they?

Mr. Greenfield: Well, there is Sam Wahyou's deposition in 1956.

Mr. Macomber: I will stipulate that may be admitted.

The Court: Through stipulation, the deposition of Sam Wahyou, dated October 20, 1956, is admitted in evidence. It may be opened and published.

Clerk: Plaintiffs' Exhibit 5-P.

[See page 151.]

The Court: Other than the Wahyou deposition, I think all the rest were admitted at the pre-trial.

Mr. Greenfield: As a matter of fact, your Honor, these three were not.

Mr. Smith: In the pre-trial order they were included, but not in the list of exhibits. At the first pre-trial.

The Court: So there will be no confusion in the

record, let us stipulate that the deposition of Archie Eugene Corbari, dated October 17, [134] 1952, the deposition of W. W. Lord, dated October 17, 1952, the deposition of Sam Wahyou and Forrest E. Macomber dated October 18, 1952, have all heretofore been admitted in evidence.

Mr. Macomber: So stipulated.

Mr. Smith: That is agreeable. Now, your Honor, the Wisecarver deposition, I believe, was conditionally admitted, subject to further ruling on the part of the Court, and will there be a further ruling at this time, or will the Court reserve the ruling until later?

The Court: Now counsel, what was that?

Mr. Smith: It was my impression that the Court ruled on the Wisecarver deposition that it was conditionally admitted, subject to further order of the Court, and I wondered if there would be an order at this time, or whether you would reserve the ruling until later; and there was further foundation to be laid. I do not believe it was admitted.

Mr. Greenfield: It was admitted, your Honor. It is marked.

The Court: I do not think we have any loose ends.

Mr. Smith: I think not. I think that is everything, so far as we are concerned. Plaintiffs rest.

The Court: Any rebuttal? [135]



## SAM WAYHOU

having been previously sworn, testified on rebuttal as follows:

## Examination

Q. (By Mr. Macomber): Did you have any cattle on the Diamond S Ranch in 1950?

A. 1950—we had no cattle in 1950.

Q. Did you have any cattle on the ranch in 1951? A. Yes. Not my own cattle, sir.

Q. Whose cattle?

A. Henry Platt from St. John.

Q. How many? A. Oh, around six hundred.

Q. And for what period of time?

A. From June to the end of October.

Q. Were they on the base ranch, that is, on the meadow land, or where?

A. When the cattle come in they were on the grazing range.

Q. Then what?

A. Then they go back.

Q. And when did they go off the land?

A. Oh, I believe that they went off the range the end of October or sometime in November. Cattle was sold.

Q. At the time the cattle were sold, was there any feed left in the meadows?

A. No, there wasn't much feed in the meadow on account of the meadow got water on it. The rest of the ranch not much feed. [136] Couldn't water enough get up that high.

Q. What was the condition of the ditches on the ranch in 1951?



(Testimony of Sam Wahyou.)

A. The condition in 1951 was the ditches was very bad.

Q. Did you have any alfalfa on the ranch in 1951?      A. Oh, yes.

Q. How many acres?

A. 1951—I believe we had four or five hundred acres; just planted.

Q. The first year?

A. Yes, first or second; then we planted corn in '52.

Mr. Macomber: That's all. That is defendants' case, your Honor.

The Court: Mr. Wahyou, will you please remain in the witness stand. This morning you testified that when you purchased the Corbari stock he owed you some money. I do not recall whether or not you testified as to the amount of money that he owed you at that time.

A. Yes, he owed me some money.

Q. Now you said that you bought this stock, having in mind that he owed you some money, that you were also security on another indebtedness, that those matters being true, you failed to make a profit on the venture? [137]      A. Yes.

Q. Somewhere I recall that you said he owed twelve thousand dollars to a bank and you were surety on that?

A. Not the bank; it was personal.

Q. And was the amount twelve thousand or \$12,500?      A. Something like that.

Q. Did you have to make good on that?

(Testimony of Sam Wahyou.)

A. No, I didn't make good on that. The money he borrowed from this place, the security was his ranch.

Q. So even though you were a guarantor on that loan, you didn't pay anything?

A. I didn't pay it. His ranch, the Tracy Ranch, was sold, foreclosed later on.

Q. Now you bought the Corbari note in the amount of five thousand dollars approximately from the Valley Bank?

A. No, the Bank of America.

Q. And that bank held this stock in pledge that you subsequently bought? A. Yes.

Q. You paid the Bank of America approximately five thousand dollars for that note?

A. Yes, five thousand five hundred.

Q. Somewhere between five thousand and six thousand? [138] A. Yes.

Q. Now was there any other indebtedness owed by Mr. Corbari to you, other than these items we have discussed, that you have expended over here?

A. No, I think he owed me personally just a small amount, fifteen or sixteen hundred dollars.

The Court: Do you desire to ask any questions on the examination, gentlemen?

No questions.

The Court: Are there any other witnesses?

Mr. Macomber: That is all, your Honor.

The Court: I assume, then, that the case stands submitted. You know in the vicissitudes of ranching and livestock business, a spread of years is

about the only safe measuring device that an operator can go on. I make this observation, that the years we have had have all been after 1951, and as far as this Court is personally concerned, the years prior to 1951 would have been just as important and helpful to the Court. In other words, the pendulum is moving up and down and it is a difficult thing to judge a matter looking through the gun barrel from one end. That is just what we are [139] doing. We are working this case out on the basis of hind-sight, to a large extent. [140]

[Endorsed]: Filed Nov. 6, 1957.

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PLAINTIFF'S EXHIBIT No. 1-P

[Title of District Court and Cause.]

DEPOSITION OF SAM WAHYOU

Stockton, California, October 20, 1956, 1:30 o'clock, p.m.

Appearances: For the Plaintiffs: Smith & Ewing, Attorneys-at-Law, Caldwell, Idaho, by Laurence N. Smith, Esq. For the Defendants Diamond-S Ranch Co., and Sam Wahyou: Forrest E. Macomber, Attorney-at-law, Bank of America Building, Stockton, California. [1]\*

Deposition of Sam Wahyou, a witness of lawful age, taken on behalf of the plaintiff in the above entitled cause, wherein G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, trustees of John W. Smeed Estate are the plaintiffs and

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\* Page numbers appearing at top of page of Original Deposition.

(Deposition of Sam Wahyou.)

Archie E. Corbari, otherwise known as A. E. Corbari, Marie Corbari, Sam Wahyou, Diamond-S Ranch Co., incorporated under the laws of Nevada, Forrest E. Macomber, A. E. Corbari, Sam Wahyou, K. R. Nutting, and Thomas G. Lee, trustees for the assets of Diamond-S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon, Herbert Jang, otherwise known as Herbert Jong and D. W. Zignego, are defendants, pending in The United States District Court for the District of Nevada, pursuant to agreement, before Darrel D. Hill, a notary public in and for San Joaquin County at the law offices of Forrest E. Macomber, Bank of America Building, Stockton, California on the 20th day of October, 1956.

Mr. Smith: This is taken pursuant to oral stipulation as to time and place of taking of deposition under the usual stipulations pertaining to federal rules.

Mr. Macomber: Yes. [2]

### SAM WAHYOU

a witness, named in the agreement, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

#### Examination

Q. (By Mr. Smith): Will you state your name?

A. Yes. Sam Wahyou.

Q. And you reside at Stockton, California?

A. Yes.

Q. And you are one of the defendants in the case

(Deposition of Sam Wahyou.)

of G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, trustees of John W. Smeed Estate.      A. Yes. Excuse me just a minute.

Q. You are one of the defendants in this pending lawsuit?

A. Well, I guess so. They are suing me or?—

Q. Now, Mr. Wahyou, several years ago you bought some stock, 310 shares of stock of the Diamond-S Ranch Corporation from the Bank of America at a foreclosure proceeding, is that correct?      A. Yes.

Q. And that was the stock that formally had been owned by Archie Corbari?      A. Right.

Q. And you from time to time had purchased other shares of stock of this corporation?

A. You mean I did? [3]

Q. Well, you owned stock in the corporation prior to the purchasing of the 310 shares of the Corbari stock?      A. Yes.

Q. And you still own stock now, do you not?

A. Yes.

Q. Now, are you fully acquainted with the financial transactions of the Diamond-S Ranch Company?      A. Yes.

Q. Do you know and are you aware of the declining financial position of the corporation over the period of the last five years?

A. Well, what do you mean by such words?

Q. I mean this: you are aware of the fact that the corporation has lost money over the past five years?      A. Yes.



(Deposition of Sam Wahyou.)

Q. And that between the year 1950 and 1951 it lost money? A. Yes.

Q. And between the year '51 and '52 it lost money? A. Uh-huh (yes).

Q. Between '52 and '53 it lost money?

A. Lost money every year.

Q. Are you acquainted with Frank H. Hogue?

A. Yes.

Q. How long have you known Mr. Hogue?

A. Oh, about four or five years—four years I believe.

Q. You have been associated with him in business ventures? [4] A. Yes.

Q. You are now associated with him in some business venture, are you not? A. Yes.

Q. On August 30th, 1953, you sold to Frank Hogue a substantial block of stock in the Diamond-S Ranch Company, did you not? A. Yes.

Q. And at the time Mr. Hogue purchased this stock he was aware of the condition of the corporation? A. What do you mean by that?

Q. He knew of the financial condition of the corporation, did he not? A. Oh, yes, he knew.

Q. And you discussed the transaction with him at some length, did you not? You talked with him about buying the stock?

A. Yes, yes. I am not talking of buying; I sell it to him.

Q. Yes. How did the arrangement come about that he purchased the stock?



(Deposition of Sam Wahyou.)

A. Well, the arrangement was this: the Ranch Company, the Diamond-S Ranch Company, financially couldn't go ahead with the operation so we asked Frank to come in with the corporation to finance the—to keep the ranch going.

Q. Now you sold him a number of shares [5] of stock. Do you know how many?

A. Well, I don't know exactly but he own one-third. We sold him-between us, I give him some stock and Nutting give him some stock to make his one-third interest.

Q. In other words, you and Mr. Nutting together with Mr. Hogue worked out a plan so that Mr. Hogue purchased stock from you and from Mr. Nutting so that he would own one-third of all of the outstanding stock of the corporation?

A. Well, he don't buy from Nutting. Nutting just give him what it was he had more than one-third. In other words, just give him.

Q. You sold him 106½ shares of stock, according to the stock record, is that correct, as far as you know?

A. Well I can't remember but he own one-third interest.

Q. All right.

A. He had a one-third interest. I sold him mine and then Nutting give him what he got more than one-third and he give him that so make him own one-third.

Q. Now Mr. Hogue reports that he paid you

(Deposition of Sam Wahyou.)

A. Well, it still lose money.

Q. Well, let's get at it this way: You bought Corbari stock in May of 1951? A. Yes.

Q. You sold to Hogue in August of '53.

Between May of '51 and August of '53, the ranch had lost money, had it not?

A. Yes, that's right.

Q. Now in your deposition that you gave here four years ago you testified that at the time you bought the stock that Corbari had owned you bought it to protect yourself because it was worth more money than you paid for it?

A. Well, I can't remember what I told you those days, but whatever it is naturally it's got to be worth more before I buy it, and, not only that, because I don't want to let the stock go outside and someone else have it. You know, that is the reason, too.

Q. Well, calling your attention to page 112 of the record of the United States Court of Appeals, Case Number 14,902, titled the same as this case, you were asked this question—and it was referring to the Corbari stock: "But why did you buy it from the bank?" Your answer: "Because I would have the stock here and the stock is worth more money, oh, maybe ten thousand worth more. He owes me money, too. If the bank take that here I am going to lose. [9] I can't get no money from him, that is why I bought it from him." A. Yes.

Q. Now at that time you thought that stock was

(Deposition of Sam Wahyou.)

worth ten thousand dollars more than you paid for it?

A. Probably, yes.

Q. And you paid five thousand for it?

A. Yes—I can't remember five thousand. More or less, yes.

Q. Five thousand or fifty-five hundred, one or the other?

A. Yes.

Q. I don't remember.

A. Yes.

Q. But it was one or the other?

A. Uh-huh (yes).

Q. Now you are fully familiar with the ranch, are you not, the real property——

A. Yes.

Q. ——of the ranch?

A. Yes.

Q. And in 1951, at the time you bought this stock, have you any idea of the value of the real estate? How much was that ranch worth?

A. Well, I really don't know but I try to get all I can to get out. I try to sell the ranch all the time for what I got into it, see. [10]

Q. Have you had this ranch offered for sale?

A. Well for sale all the time but I never had anybody give me an offer.

Q. What price have you had on it, what has been the asking price for the ranch properties of the Diamond-S Corporation?

A. When was that? What year?

Q. Well, do you recall in 1950 what you were asking for it?

A. I don't.

Q. Do you in 1951?

(Deposition of Sam Wahyou.)

A. I can't recall how much I asked for it but I tried to sell it for what we got in there.

Q. Was there every a time that you offered this for sale at a price of approximately \$325,000, that is the real estate?

A. No, I don't think so.

Q. Do you recall making a commitment——

A. 1951, you say?      A. '50 or '51.

A. No, I don't think so.

Q. Do you recall making a commitment to a real estate agent at Winnemucca, Nevada for the sale of this property?      A. No.

Q. Do you recall the corporation authorizing such proposed sale? [11]

A. Well you mean our company authorizing the selling?

Q. Yes, your company.

A. Well, we say in the meeting, we want to sell all the time and try to get what we got in it.

Mr. Macomber: Just a minute. Let's see if I understand it correctly.

You mean for years this company has been trying to sell the ranch?      A. Yes.

Mr. Macomber: For whatever you had in the ranch?      A. Uh-huh (yes).

Q. (By Mr. Macomber): Without anything for the stock?

A. That's right, just what we got in it.

Q. (By Mr. Macomber): No amount for the stock?

(Deposition of Sam Wahyou.)

A. Yes. We keep trying to sell it here to get out.

Q. (By Mr. Smith): What price have you had on the ranch for sale? A. Now?

Q. Now what price, what are you asking for it now? A. Now, a million dollars.

Q. A million dollars? A. A million dollars.

Q. That is for the real estate up there?

A. Yes, real estate and cattle, equipment, everything. [12]

Q. All right.

Have you divided that? A. How's that?

Q. Have you divided that, broken that down, so much for land, so much for machinery, so much for cattle? A. No.

Q. It is just a flat million dollars?

A. A million dollars.

Q. Take it or leave it.

A. One-package deal, that's right. That is what we got in it.

Q. You think that a fair market value of the Diamond-S ranch properties then is a million dollars?

A. Well I don't know. That is what we got in there.

Q. That is what you are asking for it?

A. Yes.

Q. A million dollars? A. That's right.

Mr. Macomber: Might take less?

A. I try to give away but Nutting won't.

Q. (By Mr. Smith): Well, Mr. Nutting will be here shortly and we'll take his deposition.

(Deposition of Sam Wahyou.)

At least in 1951 when you purchased the shares of stock of Corbari you thought that they were worth considerably more than you paid for them?

A. Probably is, sure. [13]

Q. And how did you arrive at that?

A. Well, at the time I feel the land was worth more money than that.

Q. What did you think the land was worth?

A. At that time?

Q. At that time.

A. Well maybe worth about maybe a lot more than what we paid for it, one hundred and fifty, two hundred thousand.

Q. You think it was worth one hundred and fifty or two hundred thousand or more?

A. Maybe, I don't know. But on that time, oh, I don't think I am going to get too heavy. We had a bad enough stock, so far as our statement showed wasn't worth very much money.

Q. Well the statement shows that the value of the real estate is approximately \$94,000.

A. Yes, that is from the beginning.

Q. From the beginning? A. Yes.

Q. The land is worth considerably more than that statement reflects?

A. That's right; that's right.

Q. And have you any idea how much more?

A. Well a hundred thousand—a hundred thousand dollars easy.

Q. Easy a hundred thousand dollars? [14]

A. Yes.



(Deposition of Sam Wahyou.)

Q. Mr. Wahyou, don't you think as a matter of fact that it is worth two hundred thousand more than that statement shows?

A. What, the land?

Q. Yes?

A. Well, the statement show—no, not the land, not just only the land.

Q. I am talking about the land.

A. I don't think so.

Q. You think a hundred thousand more?

A. Yes.

Mr. Macomber: Just a minute now. That isn't what the witness testified to.

Mr. Smith: Yes, it is, as I understand.

Mr. Macomber: He didn't say it was worth a hundred thousand more than the statement showed. He said it was worth a hundred thousand.

Mr. Smith: Just a minute.

Mr. Macomber: Read the answer.

Mr. Smith: Read it back.

The Witness: You mean a hundred thousand plus ninety-four thousand, you mean?

Q. (By Mr. Smith): Yes.

A. Well, that I don't know. I said worth over a hundred thousand dollars, I say, I mean more than what we paid for it. [15]

Q. Yes.

A. That's right. But not—that I don't know, as to what we paid ninety some thing thousand, cost that time. Land go up more so it is worth more than

(Deposition of Sam Wahyou.)

a hundred thousand but not on top of the ninety-four. That I don't know. It is worth more than a hundred thousand dollars, the ranch, I mean, that is what I am thinking about, too.

Q. Well, now what you said, Mr. Wahyou, was that you thought the ranch was worth easily more than a hundred thousand more than you paid for it.

Mr. Macomber: No, he didn't say that.

Mr. Smith: Just a minute.

Mr. Macomber: You're not going to say he did say that when the record speaks for itself.

Mr. Smith: Well now, don't get yourself all boiled up here.

Mr. Macomber: I don't like your misstatements as to what he said. The record speaks for itself.

Mr. Smith: Now we'll let the record speak for itself.

A. I said over a hundred thousand, worth over a hundred thousand.

Mr. Smith: Wait a minute, Mr. Wahyou. The record shows here that I asked if the property was worth—how much more the property was worth than the book value and you said easily a hundred thousand. Now did you mean [16] it was worth a hundred thousand more than you had it on the books for? A. No, no.

Q. What did you mean?

A. I mean our land we paid for it ninety-four thousand, when that time it was over ninety-four thousand. It would be one hundred thousand or better.

(Deposition of Sam Wahyou.)

Q. You mean only six thousand more than you paid for it?

A. Well, because land raises up, it looks better, prospect better.

Q. What year did you buy that property, Mr. Wahyou? A. '44, '45, '45 I think.

Q. And in 1951 then you think it was worth something over a hundred thousand?

A. That's right.

Q. Do you know how much more?

A. I don't know, I don't know how much more but we try to sell it all the time. Many a time.

Q. Mr. Wahyou, the books of the corporation for the year ending December 31, 1955 show assets of cash, livestock, depreciable assets, land, advances and other assets totaling \$455,021.29.

Now, are those statements shown in the balance sheet of the Diamond-S Ranch Company correct as to the position of that corporation, do you know?

A. Absolutely our statement is correct. Yes, [17] our statement, yes. I don't know what you read, a number here, I can't—you know I have got nothing to look at it.

Q. Well, I'll get at it this way, Mr. Wahyou—

A. Yes.

Q. (Continuing)—the statement that appears on the books of the Diamond-S Ranch Corporation, that statement is correct as to the condition of the corporation? A. Yes, sir.

Q. Mr. Wahyou, the assets of the corporation as of the day that you purchased the Corbari stock, or

(Deposition of Sam Wahyou.)

the statement of the corporation as of the date that you purchased the Corbari stock showed the corporation to be broke, that is, it had expended \$6,000 more than all of the contributed capital.

Mr. Macomber: Are you making that as a true statement?

Mr. Smith: Yes.

Mr. Macomber: Well, I don't think, so far as I know, that there has been any statement as of the date that he bought the stock.

Mr. Smith: All right. Just strike that. Just strike that question one minute.

Q. (By Mr. Smith): Mr. Wahyou, the balance sheet of the Diamond-S Ranch Corporation shows as of 12-31-51 that there was a net loss to date, including the capital stock or original investment of \$7,122.40. Now, if that [18] statement is true, how do you arrive at the fact that you thought Corbari stock, which represented approximately 20 per cent of all of the outstanding stock, was worth some ten thousand dollars more than you paid for it?

A. In September, 1951?

Q. Yes?

A. Well, I couldn't tell you exactly because you asked me something there and I—you know as to the statement and all the statement coming now, you know, I can't remember those things. I have got to have a paper to look at. Just a statement, itself, what it says, from our own office, our statement, what it says.

(Deposition of Sam Wahyou.)

Q. Mr. Wahyou, you were familiar with the condition of the business at the time you bought that stock, weren't you? A. Yes.

Q. And you knew exactly the condition of the corporation? A. Yes.

Q. So that when you say that you think the stock was worth at least ten thousand dollars more than you paid for it, you must have felt, did you not, that the land was worth much more than you had it on the books for?

A. Well, that I don't know. But so far as our company it was what they paid for it, it is what they show there. So when I bought the stock and I got a chance to buy it off the company and make money or lose money, that is my [19] business. And I got a chance to buy it.

Q. You thought you were going to make money, did you not? A. Oh, sure.

Q. You intended to make money when you bought it? A. Sure.

Q. And you thought that you would make at least ten thousand dollars or more?

A. Well maybe more. Maybe. I don't know.

Q. How much did you think you would make?

A. Well, that time when I bought it here the principal idea was first I thought I was going to put my ranch clear through to make money, and secondmore, I don't want a stock to go out someone else bought it, so that is why I bought the stock. I didn't buy from Corbari, I buy from the bank.

Q. Yes, I know.

(Deposition of Sam Wahyou.)

A. I can't see anything wrong there. It's on the record.

Q. Did you or did Mr. Nutting make the arrangement with Mr. Hogue for the purchase of this stock?

A. Yes—whose stock?

Q. At the time that Mr. Hogue purchased the stock did you or did Mr. Nutting make the arrangements with Mr. Hogue?

A. Sure, yes.

Q. Well, who did?

A. Mr. Nutting.

Q. Well, that is what I asked. [20]

A. Yes.

Q. You had nothing to do with it yourself?

A. Oh, yes, we three were there, we sit down and talk together.

Q. Where did the conversation take place?

A. At Winnemucca.

Q. When?

A. Well—

Q. Well, the sale indicates, the stock record indicates that the sale was made August 30th, 1953.

Is that correct?

A. 1953. Yes. Whatever the record shows. But just a few days before that.

Q. Well the transfer was made that day, so it was just a few days prior to that?

A. Yes.

Q. At Winnemucca?

A. At Winnemucca.

Q. And Mr. Hogue had been out and looked over the ranch?

A. Sure.

Q. And looked at all of it?

A. Yes.

Q. He knew of the condition?

A. Well, he was down there one day looking at the ranch.



(Deposition of Sam Wahyou.)

Q. And he knew of the condition of the ranch?

A. Yes. [21]

Q. That is, of the corporation, he saw the books of the corporation or at least he saw a report?

A. No, I don't think he saw a book.

Q. Did anybody tell him of the condition of the ranch?      A. Yes, we told him the condition.

Q. He knew of the financial condition of the Diamond S Ranch Corporation as of that date?

A. Well, he didn't know but we told him.

Q. That is what I mean.      A. Yes.

Q. He was informed by you and Mr. Nutting?

A. That's right.

Q. And then he purchased that stock for thirty-five thousand dollars?      A. That's right.

Mr. Smith: I think that is all.

#### Examination

Q. (By Mr. Macomber): Mr. Wahyou, state whether or not one of the reasons that you wanted Hogue in this picture was because he had a lot of money and could loan the corporation money to operate on if he bought in.

A. That is the reason we asked him to come in in business with us, yes.

Q. Now Mr. Hogue paid thirty-five thousand dollars for his stock, did he not?

A. Yes. [22]

Q. For a third of all the stock of the company?

A. Yes.

Q. And what was to be done with the thirty-

(Deposition of Sam Wahyou.)

five thousand dollars? Was there anything said about that?

Mr. Smith: Just a minute. I object to that as incompetent on the ground that what was to be done is immaterial.

Mr. Macomber: Well, it is part of the deal.

Q. (By Mr. Macomber): Answer the question.

A. The only thing I have to tell you, the thing is because, see, the ranch company we got no money, we can't continue operating so we want Mr. Hogue come in the picture to help us continue, so I told him — I got everybody's stock together, I take it over, I sold it to him, Hogue, for \$35,000. I took the money and we put it up at the Diamond S Ranch here to operate.

Q. (By Mr. Macomber): In other words, before Hogue agreed to buy the stock he insisted that you put the thirty-five thousand or loan the thirty-five thousand dollars to the Ranch Company?

A. That's right.

Q. Until such time as you made some money?

A. That's right.

Q. All right. The stock actually, most of it, came from Tommy Lee, Herbert Jang, Yip Toon, Toy Quong, and Joe Sin, did it not? [23] A. Yes.

Q. What did they get for their stock at that time? A. They didn't get nothing.

Q. Did you tell them that they would get anything for the stock?

A. Well here's the way I tell them:

(Deposition of Sam Wahyou.)

The ranch got to keep continue going, see.

Q. Yes.

A. "You can't put up the money to keep the ranch going so we got to have—we got to get somebody else who put the money in there."

So I say—I told them, let them just give the stock to me and I sell it to these people and put the money in the ranch, when I come out of the ranch here what money I get out of the ranch I pay you fellows one hundred per cent back and I take the loss.

Q. Now has the ranch lost money almost continually from the time that the corporation has owned it? Did it ever make any money?

A. Never made any money, no, just continually down, right up to date.

Q. Now have you been willing—that is when I say you I mean as a corporation been willing to sell the ranch for the past five or six years?

A. Yes.

Q. At what price? [24]

A. We never have really set the price and we tried to get out what we got in it and what loan we give to the ranch company, plus I sign a note for the ranch, see.

Mr. Smith: Plus what?

(Whereupon the reporter read the answer.)

Q. (By Mr. Macomber): In other words, if you could get out enough money to pay off all the debts of the company——

A. Yes.

(Deposition of Sam Wahyou.)

Q. —plus whatever advances you made to the company—— A. Yes.

Q. —without any allowance for capital stock—— A. I take that.

Q. You take that? A. Yes.

Q. And you would do that right now, wouldn't you?

A. I give it to you right now, and I take 20 per cent of what I loan to the company off.

Q. In other words, you would agree to lose all of your capital investment?

A. All capital investment.

Q. And 20 per cent of what you loaned to the company? A. To the company.

Q. And take that and get out?

A. Yes. And Mr. Frank Hogue is willing to do that, too. He told me that. I just speak for him. I know he told me that. [25]

Mr. Macomber: That is all.

Q. (By Mr. Smith): Mr. Wahyou, the thirty-five thousand that went back in that you got from Frank Hogue for the capital stock is evidenced by a corporation note from the corporation to you, isn't it? A. Yes.

Q. So that you actually received \$35,000 for that stock? A. Yes.

Mr. Smith: That is all.

Mr. Macomber: That is all.

/s/ SAM WAHYOU,  
Signature of Witness.

Subscribed and sworn to before me this 13th day of November, 1956.

[Seal]      /s/ DARREL D. HILL,  
Notary Public in and for the County of San Joaquin, State of California. [26]

Admitted in Evidence June 4, 1957.

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PLAINTIFF'S EXHIBIT No. 5-P

[Title of District Court and Cause.]

DEPOSITION OF ROBERT WISECARVER

Appearances: Laurence N. Smith, Esq., Caldwell, Idaho, for Plaintiffs. Forrest E. Macomber, Esq., 711 Bank of America Bldg., Stockton, California, for Defendants. [1]\*

Be It Remembered, that pursuant to notice and subpoena duces tecum, and on Monday, May 6, 1957, commencing at the hour of 10:00 a.m. thereof, at the offices of Nichols, Williams, Morgan & Digardi, 616 First Western Bank Bldg., Oakland 12, California, before me, Frank Lipold, a Notary Public in and for the County of Alameda, State of California, personally appeared Robert Wisecarver, a witness of lawful age, produced on behalf of the plaintiffs herein, under and pursuant to Rule 26, and following, of the Federal Rules of Civil Procedure, who, being by me first duly sworn, was then and there examined and interrogated as a witness in the above-entitled court and cause.

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\* Page numbers appearing at top of page of Original Deposition.



(Deposition of Robert Wisecarver.)

It was stipulated that Frank Lipold may act as Notary Public and shorthand reporter in the taking of said deposition.

It was further stipulated that said deposition is taken pursuant to Rule 26, and following, of the Federal Rules of Civil Procedure.

It was further stipulated that all objections except as to the form of the question and all motions are reserved until the time of trial.

It was further stipulated that in the event the witness refuses to answer a question it be deemed that the Notary Public has instructed the witness to answer and that the witness refuses on advice of counsel.

It was further stipulated that the witness need not [2] sign said deposition before the Notary Public.

It was further stipulated that said deposition may be delivered to the attorney representing the witness, to be presented to the witness to be read, corrected, and signed, and that if it is not signed by the time of trial, reasonable opportunity having been given to do so, a copy may be used at the trial with the same effect as though it had been signed.

#### ROBERT WISECARVER

a witness, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Mr. Smith: I suppose the usual stipulations, Mr. Macomber, pertaining to the objections to relevancy and competency——



(Deposition of Robert Wisecarver.)

Mr. Macomber: In accordance with the Code, in other words, of Civil Procedure.

Examination

Q. (By Mr. Smith): Mr. Wisecarver, will you state your name? A. Robert Wisecarver.

Q. And where do you reside?

A. Brentwood, California.

Q. And what is your occupation?

A. Banker.

Q. And with what Bank?

A. Central Valley National Bank. [3]

Q. At Oakland, California? A. Right.

Q. What work do you do in connection with the Bank? A. In the Credit Department.

Q. And have you done some appraisal work from time to time for the Bank? A. Yes, sir.

Q. Are you their official appraiser on various types of loans? A. I do some appraising.

Q. Well, is that principally what you do for the Bank? A. No.

Q. You just do some appraising as the matter comes before you? A. That is right, sir.

Q. Now, did you, in 1954 or 1955, make an appraisal of the ranch property of the Diamond S. Ranch Corporation, which properties are located in Humboldt County, Nevada?

Mr. Macomber: I will object to that as being hearsay, calling for hearsay, and being incompetent, irrelevant and immaterial but you go ahead and answer it.

The Witness: Yes, sir.

(Deposition of Robert Wisecarver.)

Mr. Smith: And did you physically inspect the properties yourself? A. Yes, sir.

Mr. Macomber: May it be understood that the objection goes to the whole line of his testimony so I won't have to repeat it each time?

Mr. Smith: Oh, surely, that will be fine.

Mr. Macomber: Fine.

Mr. Smith: Will you give me the date of that appraisal? [4] A. June 15, 1954.

Q. And at whose request was the inspection made? A. Mr. Wahyou, W-a-h-y-o-u.

Q. Then that is Mr. Sam Wahyou, one of the defendants in this action?

A. I presume so, I don't know anything about it.

Q. Well, it is the Mr. Sam Wahyou of Stockton, California? A. Yes, sir.

Q. And did you accompany him to the ranch?

A. Yes, sir.

Q. And did you make a complete examination of the properties? A. To the best of my knowledge.

Q. Did you make any written memorandums though or written notes of the properties that you inspected? A. Just the appraisal.

Q. Do you have that with you?

A. Yes, sir.

Q. May I have it?

(Document handed to counsel by the witness.)

Q. (Continued) Handing you the appraisal, I

(Deposition of Robert Wisecarver.)

will ask you if that is the appraisal that you made of the Diamond S. Ranch properties in Humboldt County, Nevada?      A. Yes, sir.

Mr. Smith: And I would like to have it marked Exhibit "A", please.

(Document marked Plaintiff's Exhibit "A"

for identification, pages 1 through 6 inclusive.)

Mr. Smith: Now, Mr. Wisecarver, if you will take that appraisal, and I will ask you if you have broken that down into values, first for the real estate, and then for livestock?      A. Yes. [5]

Q. What was the value you placed upon the real estate of the Diamond S. Ranch Company, which real estate is located in Humboldt County, Nevada?

A. The land value is \$473,000, and the improvements some is \$14,300.

Q. Now, Mr. Wisecarver, was that appraisal made in connection with a loan which Mr., or which the Diamond S. Ranch Corporation procured from the Bank by which you are employed?

A. Yes, sir.

Q. And was that appraisal the basis for the loan?      A. One of the bases for the loan.

Q. Did you know how much of a loan, how much of a loan was made to the corporation based upon that appraisal?      A. Yes, sir.

Q. How much was that?      A. \$225,000.

Q. And as an appraiser, did you feel that the land, that the assets, the land of the Diamond S. Ranch Corporation in Winnemucca, was worth at least twice the value of the loan?

(Deposition of Robert Wisecarver.)

A. No, I would say this was the full appraisal.

Q. Well, the appraisal is \$473,000, plus what else?

A. Plus \$14,300 given to the improvements.

Q. And do you think that is a full and fair appraisal of the property?

A. Yes, I would say it was a generous appraisal.

Q. Now, do you know whether or not there are any other assets of the Diamond S. Ranch Corporation?

A. No, I wouldn't know that.

Q. The only properties that you were shown are shown, are reflected in your appraisal?

A. Yes, sir. [6]

Q. Now, are you familiar with the Taylor grazing rights in connection with this ranch property?

A. Somewhat, yes. I make a memo of that in my appraisal, I believe.

Q. And what is your memo in that respect?

A. I don't see anything in here regarding it but I am somewhat familiar with it.

Q. Well, at the time you arrived at the value of the properties, you took into——

A. That is right.

Q. ——into consideration the grazing rights?

A. That is right.

Q. All of the Taylor rights?

A. (Witness nods head affirmatively.)

Q. You, I presume, determined at the office of the Taylor Grazing Service in Winnemucca the various units, animal units, in connection with the land?

(Deposition of Robert Wisecarver.)

A. That is right, we check them, yes.

Q. You had all of those things in consideration and in mind when you made the valuation that you did?

A. Yes, sir.

Q. Now, what has been your background for appraisal work?

A. Oh, appraised many farms, ranches, cow outfits, land with deciduous fruits, vines, pasture lands, row crop farming land, considerable grazing pasture lands, supported cattle and sheep.

Q. Then, this type of operation that the Company was operating at Winnemucca was not a new or different operation to you?

A. I would say not. [7]

Q. And are you familiar with what they were using the property for? You knew it was a cow and calf outfit, or a feeder outfit?

A. Yes, sir.

Q. And it was based upon the most valuable use of the property that you arrived at the value you did, is that correct?

A. Yes.

Q. And were they making the most valuable use of the property in your estimation?

A. That, I couldn't say. They were in the process of clearing land and planting it to crops, some crops that had, as far as these people were concerned I am told, have never planted before, some new grasses, expansion in alfalfa. They were making many changes at the time.

Q. Mr. Wisecarver, will you briefly outline the various observations that you made at the time you were on the property, that is as to irrigation, water



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rights, equipment, availability of range, and all the various things that went into the arriving of the value that you set?

A. Well, they had a pipeline that they were putting in on government land for insurance water from Pole Creek; they were building a feed lot, they were putting up—they were making way for a feed lot; they were talking about feeding the cattle there. They were planting the level land to grasses that were better grown in arid areas, such as where the ranch is located. They had a, at that time I believe they had a barley crop in one end of the ranch. They had, I believe I have noted here, I put approximately 750 acres in alfalfa. [8]

Q. You made a personal inspection of all that?

A. Yes, sir.

Q. Now, this was done at the request of Mr. Wahyou?      A. Yes, sir.

Q. Now, did Mr. Wahyou make any statements to you as to what he thought the value of the ranch was?      A. Not that I recall.

Q. He was with you when you were up there?

A. Yes.

Q. Or you were with him?

A. (Witness nods head affirmatively.)

Q. And he had applied for a \$420—or \$225,000 loan, had he not?      A. Yes.

Q. And it was to be based upon this particular piece of property?      A. Yes.

Q. Now, what is the basis that the Bank makes



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a loan on real estate, in relation to the appraised value and the size of the loan?

A. Usually fifty percent of the appraised value, by law sixty six and two thirds. The man is given a lot of consideration before you ever make the appraisal. We have had other dealings with Mr. Wahyou. They have been very satisfactory and that was an incentive to go up and make the appraisal for them.

Q. But the fact still remains that the appraisal you made reflects your best judgment as to the value of the property at the time you made the appraisal? A. Yes, sir.

Q. Now Mr. Wahyou felt, did he not, that it was well worth the appraisal that you made?

A. Oh, no doubt he did. He [9] asked for the appraisal to be made and he requested an appraisal to be made.

Q. Did he submit, at the time he asked the appraisal to be made, any figures as to what he thought the value of the property was?

A. No, sir, he didn't.

Q. Did he ever state to you what he thought the value of the property was?

A. Not that I recall.

Q. Did you have any discussion with anybody connected with the Diamond S. Ranch Corporation as to what they thought the value of the property was? A. No, sir.

Q. Do you think that, do you believe that current retail prices for real estate today is approxi-

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mately the same that it was at the time you made the appraisal?

A. I wouldn't hazard an answer there. I really——

Q. You don't—You are not——

A. I am not familiar——

Q. You are unable to answer that?

A. That is right.

Q. Based upon the appraisal that you made, the loan to the corporation was consummated?

A. Yes, sir.

Q. And that resulted in mortgaging or a Deed of Trust on the property being given to your Bank?

A. A Deed of Trust, yes, sir.

Q. And that was in the amount of \$225,000?

A. That is right.

Q. And that is the Deed of Trust which is of record in Humboldt [10] County, Nevada?

A. That is right.

Mr. Smith: I think that is all, Mr. Wisecarver.

Mr. Macomber: On what date was that appraisal made? A. June 15, 1954.

Mr. Macomber: That is all.

/s/ ROBERT F. WISECARVER. [11]

[Endorsed]: Filed June 4, 1957.

[Endorsed]: No. 15796. United States Court of Appeals for the Ninth Circuit. G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, Trustees of John W. Smeed Estate, Appellant, vs. Archie E. Corbari, etc., et al., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed: November 8, 1957.

Docketed: November 25, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 15796

G. A. MILLER, W. W. LORD, RALPH SMEED,  
L. H. STAUS and JACK SMEED, Trustees  
of JOHN W. SMEED ESTATE,  
Appellants,

vs.

1. ARCHIE E. CORBARI, otherwise known as  
A. E. CORBARI
2. MARIE CORBARI
3. SAM WAHYOU
4. DIAMOND S RANCH CO., incorporated un-  
der the laws of Nevada
5. FORREST E. MACOMBER
6. A. E. CORBARI, SAM WAHYOU, K. R.  
NUTTING, and THOMAS G. LEE, Trustees  
for the assets of Diamond S Ranch Co.
7. THOMAS G. LEE
8. TOY QUONG
9. JOE SIN
10. K. R. NUTTING
11. YIP K. TOON
12. HERBERT JANG, otherwise known as HER-  
BERT JONG
13. D. W. ZIGNEGO, Appellees.

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY UPON  
APPEAL AND DESIGNATION OF CON-  
TENTS OF RECORD ON APPEAL

Statement of Points: Pursuant to Rule 17 (6) of the rules of the above entitled Court, appellants do hereby adopt the statement of points upon which they intend to rely on appeal as the same was filed

with the Clerk of the Trial Court on October 17, 1957, and appearing in the typed Record on Appeal now in the possession of the Clerk of the above entitled Court.

Designation of Contents of Record on Appeal: Pursuant to Rule 17 (6) of the above entitled Court, appellants do hereby adopt the designation of contents of Record on Appeal filed with the Clerk of the Trial Court on October 17, 1957, and appearing in the typed Record on Appeal now in the possession of the Clerk of the above entitled Court. It is to be noted that Items 1-27 appearing in said designation are not to be printed as they appear in the transcript of record in Case No. 14902, United States Court of Appeals for the Ninth Circuit.

PIKE & McLAUGHLIN,  
SMITH & EWING,  
CARTER, McCLENAHAN &  
GREENFIELD,

/s/ By MILLER N. PIKE,  
Attorneys for Appellants.

Acknowledgment of Service Attached.

[Endorsed]: Filed Nov. 25, 1957. Paul P. O'Brien, Clerk.

1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900.

1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910.

1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920.

1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930.

1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940.

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1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990.